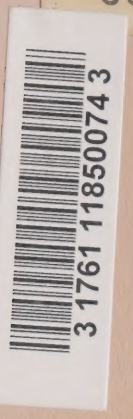
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Ontario

ROYAL COMMISSION OF INQUIRY INTO CERTAIN DEATHS AT THE HOSPITAL FOR SICK CHILDREN AND RELATED MATTERS.

Hearing held
8th floor
180 Dundas Street West
Toronto, Ontario

The Honourable Mr. Justice S.G.M. Grange	Commissioner
P.S.A. Lamek, Q.C.	Counsel
E.A. Cronk	Associate Counsel
Thomas Millar	Administrator

Transcript of evidence
for

8 May 1984

VOLUME 142

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ROYAL COMMISSION OF INQUIRY INTO CERTAIN DEATHS AT THE HOSPITAL FOR SICK CHILDREN AND RELATED MATTERS.

Hearing held on the 8th Floor, 180 Dundas Street West, Toronto, Ontario, on Tuesday, the 8th day of May, 1984.

- - - -

THE HONOURABLE MR. JUSTICE S.G.M. GRANGE - Commissioner

THOMAS MILLAR - Administrator

MURRAY R. ELLIOT - Registrar

- - - -

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K. CHOWN	Counsel for numerous Doctors at The Hospital for Sick Children
E. McINTYRE	Counsel for the Registered Nurses' Association of Ontario and 35 Registered Nurses at The Hospital for Sick Children

(Cont'd) ..


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F.J. SHANAHAN	Counsel for Mr. & Mrs. Dominic Lombardo (parents of deceased child Stephanie Lombardo); and Heather Dawson (mother of deceased child Amber Dawson)
W.W. TOBIAS	Counsel for Mr. & Mrs. Hines (parents of deceased child Jordan Hines)
J. SHINEHOFT	Counsel for Lorie Pacsai and Kevin Garnet (parents of deceased child Kevin Pacsai).

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--- Upon commencing at 10:00 a.m.

THE COMMISSIONER: I am told that after Dr. Kobayashi that Mr. Hunt will be calling Dr. Bunt, so that will keep us occupied for most of the day. For those who were hoping to get away for, I don't know what you have to do on a rainy day, but it doesn't look likely. After that if we still have time left over I still intend to go into the question of what further witnesses anybody proposes for Phase I. Miss Cronk?

MS. CRONK: Thank you, sir. I call Dr. Jeffrey Kobayashi, please.

JEFFREY KOBAYASHI, Sworn

DIRECT EXAMINATION BY MS. CRONK:

Q. Doctor, as I understand it you did your undergraduate studies at the University of Toronto in the years 1972-1974, is that correct?

A. That's right.

Q. And the following year, 1975, you commenced studies at the Faculty of Medicine at the same university?

A. That's correct.

Q. You subsequently obtained your medical degree graduating in 1979?

A. That's correct.

Q. As I understand it you then commenced a three-year Paediatric Residency in Toronto at The Hospital for Sick Children immediately upon graduation?

A. That's right.

Q. And in July 1982 you became a Neurology Fellow I am informed at The Hospital for Sick Children?

A. That's correct.

Q. During the course of the next year, that is from July 1982 until July of last year, you completed your first year as a Fellow in Neurology by spending three months at the Toronto General Hospital, three months at the Toronto Western Hospital, a month in Paediatric Neurology at The Hospital for Sick Children, and three months with the Neurology Team at The Hospital for Sick Children; do I have that correctly?

A. You have the first three months and the next three months correct.

Q. Let's deal with the two that I didn't get correct.

A. I spent three months at the Toronto General.

Q. Yes.

A.3

A. And three months at Toronto Western, and then six months, from January 1983 to the end of June 1983 at Sick Kids'.

Q. Was that period of time spent associated with the Neurology Team at the Hospital?

A. Yes, it was.

Q. And in July of last year did you then begin your second year as a Neurology Fellow at the Hospital?

A. Yes, I did. That particular rotation sent me to Bloorview Children's Hospital?

Q. That is in Toronto?

A. That's right, well, it's in North York.

Q. By my calculations then you will finish your second year at the end of June of this year?

A. That's right.

Q. You are a member of a number of professional organizations, Doctor, as I understand it. I am going to show you a copy of your curriculum vitae which your counsel has been kind enough to provide to me. I would ask you to review it if you would and tell us please whether it accurately sets

A.4

out your current professional membership and as well the details of your professional and educational background that we have just reviewed.

THE COMMISSIONER: We are in a little trouble Miss Cronk, because Mr. Tobias is not here and he was going to get us the last exhibit in some sort of legible form. I don't suppose anybody knows whether that has been obtained or not.

MS. CRONK: I don't know as yet, sir, but my recollection is a number was assigned to it.

THE COMMISSIONER: No.

MS. CRONK: It was not?

THE COMMISSIONER: No, I didn't and maybe I should have.

MS. CRONK: Could we reserve a number for it, sir, and give this document, if the doctor identifies it, the next number.

THE COMMISSIONER: What happens if Mr. Tobias just skips the country?

MS. CRONK: As it happens, sir, Commission Counsel do have a copy of the document in their possession although it is not the original and we have managed to read it.

THE COMMISSIONER: All right, then we will; 410 for the other one and 411 for this one.

A.5

MS. CRONK: Q. Dr. Kobayashi, now I have gotten things somewhat out of order, could you tell me please does it accurately set out your professional and educational background and as well your professional memberships accurately?

A. It does, but I no longer belong to the Ontario Medical Association.

--- EXHIBIT NO. 411: Curriculum Vitae of Dr. Jeffrey Kobayashi.

Q. Thank you, Doctor. During the course of your second year, Doctor, as a Paediatric Resident at the Hospital for Sick Children, were you assigned for any portion of that year to the cardiac wards?

A. Yes, I was, from March the 5th, 1981 to the end of March the same year.

Q. Was that part of the normal routine Paediatric Residents enjoyed during the course of their second year residency at the Hospital?

A. Yes, it is.

Q. It is my understanding, Doctor, that a patient by the name of Jordan Hines was admitted to The Hospital for Sick Children late in the evening of Thursday, March the 5th, 1981, and that you may have had some involvement at that time with him. Do you recall the patient Jordan Hines?

A.6

A. I recall a patient being admitted late in the evening on Thursday, March the 5th, but I did not see the child at that particular time.

Q. Were you working on the wards on Friday, March the 6th, the following day?

A. Yes, I was.

Q. Did you have occasion to see Jordan Hines at any point that day?

A. Yes, I did.

Q. Can you tell me how that came about, please?

A. We make general ward rounds, and that includes four Residents, the Cardiac Fellow and a staff person, and we go over all the patients and in particular the new patients and the ones that are ill.

Q. And was Jordan Hines one of those discussed then at general rounds that morning?

A. Yes, he was.

Q. Were you assigned to either 4A or 4B on that particular day, or when you are posted to the cardiac wards as a second year Paediatric Resident do you cover both wards at the same time?

A. No, I was assigned to 4A.

Q. So I take it then although you were assigned to 4A, and we know from other evidence that Jordan Hines was admitted to 4B, there was a general round session I take it at the start of the day?

A. That's correct, we make general rounds on both Wards 4A and 4B.

Q. And what was Jordan Hines' condition as you understood it at the time that you first saw him that morning?

A. Well from the admission notes this was a 17-day old infant who had been transferred down from North York General Hospital for apneas and bradycardias. When we made ward rounds on Friday morning we discussed the case around the bedside.

MS. CRONK: Mr. Registrar, to assist the doctor if you would please give him Jordan Hines' medical chart which is Exhibit 103.

Q. Doctor, for the purposes of my next questions please feel free to refer to Jordan Hines' medical chart if you feel it would assist you. Do you recall now at the time of the discussion during rounds that morning, whether or not any periods of apnea had been noted while the child was

at The Hospital for Sick Children?

A. During the time of the initial examination?

Q. Yes.

A. No.

Q. Were there any problems raised by any of the physicians participating in the rounds that morning connected to any respiratory problems with respect to the child?

A. Not that I recall, no.

Q. Do you recall any discussion concerning any possible myocardial failure during the course of the rounds that morning on this child?

A. No.

Q. Do you recall now, Doctor, what the diagnosis at the time was for Jordan Hines?

A. Well, the provisional diagnosis at that time was one of infection, most likely pneumonia.

Q. Were there symptoms which you considered to be symptomatic of that underlying condition, was there something obvious in his clinical condition that led to that diagnosis as you understood it?

A. No, but it was confirmed radiologically.

A.9

Q. Perhaps we will turn to that in a moment. Was it felt then at rounds that morning, as you now recall it, that Jordan Hines was in any particular difficulty apart from the suspicion that there might be an existing condition of pneumonia?

A. No.

Q. Was it suspected in any way that there may be any other underlying heart disease, congestive heart failure or any cardiac abnormality?

A. No.

Q. Had you seen at that time, Doctor, the discharge report which was prepared at the North York General Hospital concerning the patient?

A. No, I didn't.

BM/hr

Q. Did you see Jordan again at any time on that Friday after morning rounds?

A. No, Jordan was admitted to Ward B, so, he would have been taken over by the two residents who were working on 4B.

Q. You took up your own duties on Ward 4A then following the completion of morning rounds?

A. That's right.

Q. And were you on duty as well the next day, Saturday, March 7th?

A. Yes, I was.

Q. Did you see Jordan Hines that day?

A. Yes.

Q. And when was that?

A. I had made rounds early in the morning with the nursing staff and asked them if there were any problems over the night, Friday, and when I came in on Saturday.

Q. Had you been on call the Friday night?

A. No, I wasn't.

Q. All right. When you say you made early rounds with the nurses, were those rounds

on both 4A and 4B?

A. That's right.

Q. And what did you understand Jordan Hines condition to be on the morning, Saturday, March 7th?

A. That he had no symptoms, no apneas, no bradycardias,no fever over the course of Friday night and early Saturday morning before I came in.

Q. Did you personally examine the child on rounds that morning, the Saturday morning?

A. Yes, I did.

Q. And did you note any difficulty of any kind in his condition at that time?

A. No, I didn't.

Q. And did any of the nursing staff that had been on duty on the prior night raise with you any cardiac or respiratory problems that might have been noted throughout the night shift?

A. No.

Q. By that morning, Doctor, again talking Saturday, March 7th was it known to you that his heart was structurally normal?

A. Yes, I had found that out on late Friday afternoon.

Q. All right. And how did you find that out?

A. Dr. Schaffer, who was the cardiac fellow, informed all of us that he had a structurally normal heart.

Q. Well we know doctor from prior evidence and from his medical chart that an echocardiogram had in fact been done on the Friday. Were you aware of that?

A. Yes.

Q. All right. Was the suggestion raised by Dr. Schaffer that his heart was structurally normal essentially his communicating it to you and to the other involved residents the results of that echocardiogram?

A. That's correct.

Q. And you spoke a few moments ago about the suspicion that the child had pneumonia and I thought that you had said that had been confirmed on tests?

A. On the chest X-ray, yes.

Q. Could I ask you to refer to the chest X-ray in Jordan Hines chart if you would please.

The first that I am interested in is at page 73. The pages are numbered doctor in the top right hand corner?

A. Yes.

Q. Do you have it?

A. Yes.

Q. All right. This is, as we understand it, the first X-ray, chest X-ray that was done on Jordan Hines. You will see that it is dated March 5th, the day of his admission and it reports an ill defined density in the right upper lung. The doctor, radiologist who signs the chest X-ray report indicates that it was his belief that that density was due to the fact that the child had been rotated somewhat into the right anterior/position and indicated further that elsewhere the lungs were clear but the possibility of aspiration pneumonia had definitely not been excluded. Were you aware of the results of this chest X-ray on Saturday, March 7th?

A. Yes, I was.

Q. All right. Were you aware as well doctor that a subsequent chest X-ray had also been ordered?

A. Yes.

Q. And the results were somewhat different on that one, were they not?

A. Yes, they were.

Q. Could I ask you to turn to page 45 if you would. This is the report of the second chest X-ray that had been ordered, doctor?

A. Yes.

Q. And it appears to indicate that the lung fields were clear?

A. That's correct.

Q. And as well, doctor, had a virology test not also been done? A culture had been taken for testing in virology?

A. There were numerous tests done to rule out infection including a lumbar puncture and a blood culture, et cetera, but no specific viral studies were done.

Q. All right. Could I refer you first if you would please to page 44 the immediate preceeding page on the chart?

A. Yes.

Q. I am referring to a report described as Virology Requisition and Report that contains an indication that on testing no virus had been isolated and a cell culture sent for sampling. Had you seen this document before, doctor?

A. I did in reviewing the chart

last night, yes.

Q. And you have said that a lumbar puncture was also performed. It is my understanding that was done under the supervision of Dr. Mangera following the child's admission, is that correct?

A. That's correct.

Q. And what were the results of that test?

A. There was no bacterial growth and from this report there is no viral growth.

Q. And you have mentioned as well that blood cultures were done?

A. Yes.

Q. And what were the results of those tests?

A. They were negative as well.

Q. So that by Saturday, March 7th, doctor, when you saw Jordan Hines on rounds that morning did you at that time have a continuing suspicion that the child might be suffering from pneumonia or infection?

A. Yes, that was still a strong consideration.

Q. Right.

THE COMMISSIONER: I am sorry, still a strong what?

THE WITNESS: Consideration.

THE COMMISSIONER: Yes.

MS. CRONK: Q: It was still a strong consideration doctor not withstanding that all of the tests that had been done to attempt to confirm or reject that possibility had come back negative?

A. That's correct.

Q. Can you tell me please what the basis for the continuing suspicion was at that stage?

A. The child was still somewhat lethargic with the previous chest X-ray dated the 5th, which could have been an aspiration pneumonia, although, the repeat chest X-ray two days later shows that the density had cleared. To my knowledge an aspiration pneumonia doesn't clear that quickly.

Q. All right. Had there continued to be a density in any of the areas of the lungs examined by the chest X-ray, Doctor, I take it it is obvious that something would have shown up on that second chest X-ray?

A. That's correct.

Q. Are you saying then that the

child could still have had aspiration pneumonia but it would not be reflected on the second chest X-ray?

A. That's correct.

Q. It could not be definitively excluded by Saturday morning?

A. That's correct.

Q. Apart from the continuing concern then about an underlying pneumonia condition, did you have any other concerns with respect to that child's condition on the Saturday morning?

A. No, I did not.

Q. All right. Did he appear then to be stable?

A. Extremely.

Q. Extremely stable?

A. Yes.

Q. No suggestion that he was in critical condition or might be at any eminent risk of deterioration?

A. No, none whatsoever.

Q. Did you see the child again during the course of that Saturday after your rounds that morning?

A. Yes, several times because he had just been admitted. Yes, I had seen him several

times and had discussions with the nurses who were taking care of him to see if there was any apneic or bradycardic spells or any concerns that they had.

Q. And during the course of your various observations of him on that Saturday did you yourself at any time note any periods of apnea or bradycardia?

A. No.

Q. Were any reported to you by any member of the nursing staff or by any of your fellow residents who might have been on the wards?

A. There were no other fellow residents but the nurses didn't suggest to me that there were any apneas or bradycardias during the Saturday.

Q. And as it happened Doctor you had occasion to write an order with respect to Jordan Hines on that day, did you not, the Saturday?

A. Yes.

Q. Well, to be fair, could I ask you to look at page 77, please. Do you have that Doctor?

A. Yes, I do.

Q. I would refer you to the second order which appears at this page. It appears to

BM/hr

be an order made by you on 2300 hours on Saturday, March 7th?

A. Yes.

Q. And you have ordered a number of things. Perhaps you could briefly explain what you ordered and why you ordered it?

A. The electrolyte values on Saturday morning showed that the serum potassium was 2.8, which was a low value and I suggested that they increase the amount of potassium in the intravenous and that's my order Number 2; my order Number 1 was I wanted to find out where he may have been losing his potassium and that's why I ordered Number 1 to make sure that he wasn't successfully losing potassium in his urine; the order Number 3 I think is self-explanatory to recheck his electolytes after I had made the adjustments the following morning.

Q. This order Doctor appears to have been written at 11:00 o'clock at night on the Saturday. At that time did you have any reason for concern for the child's condition other than the further testing that you ordered?

A. No, I didn't.

Q. All right. Did you at that

stage have any concern that his condition had in any way changed either from that of the prior day or from that of the morning?

A. No, I didn't.

.....

C/RD/LN
1

Q. Were you on call that night, Dr.?

A. Yes, I was.

Q. Did you at some point leave the ward that night and try to get some sleep, as I have heard on occasion residents try to do?

A. Yes. I made again ward rounds and discussions with nurses in the early hours of Sunday morning before I went to my own call room.

Q. You say you went to your own call room to try and get some rest?

A. That is right.

Q. And you made rounds immediately before that?

A. Yes.

Q. Do you recall what time approximately it would have been before you made those final rounds, before you went on to get some sleep?

A. This would have been between 1:00 and 2:00 o'clock.

Q. At that time did you see Jordan Hines?

A. Yes, I did.

Q. What was his condition then?

A. Well, he had just been fed and hooked up to the cardiac monitor. His cardiac monitor

showed he was on normal sinus rhythm. He had no problems with feed prior to just before me going to my own call room and he had no apneic and bradycardic.

Q. And none had been reported to you throughout that day?

A. That's right.

Q. Was there any suggestion during that time, Doctor, he was not responding well to the antibiotic treatment that had been ordered for him?

A. No. In fact, clinically he was looking much better than when he first came into the Hospital.

Q. Would it be fair to suggest that in your judgment at that time he appeared to have improved?

A. Yes.

Q. Certainly in a stable condition?

A. Yes.

Q. Did you have any concerns at all when you went off to try to get some sleep that that child was in any danger?

A. None whatsoever.

Q. Did you subsequently return to the ward?

C3

A. I returned to the ward when the cardiac arrest was called.

Q. All right. Can you tell me please how that came about? Were you called or did you simply hear the code?

A. I heard the code over the overhead speaker.

Q. What kind of a code did you hear?

A. Code 25.

Q. Tell me, please, as best as you recall it, how long it was after had you gone to the residence sleeping quarters that you heard the code being called?

A. It is difficult, but from the time I remember going to the on call room and what is charted in the records, as to when the arrest was called it would have been approximately two hours.

Q. Doctor, do you know when you heard the code it was being called for a particular patient? Did you know which patient it was?

A. No, I didn't.

Q. Well, in terms of your immediate reaction, and I suspect, and you can tell us, you were perhaps waking up from sleep at that time, did it cross your mind when you heard that code that

C4

it might have been applying to Jordan Hines?

A. No. It was a surprise when it was Jordan Hines that they had called me.

Q. In fact, Doctor, was there any other patient on the ward that night that you had been concerned about?

A. Yes, there was another baby who was on 4B who was across from the room that Jordan Hines was in, who had, I believe, just come out from the intensive care unit, who was quite ill and when I was called to the arrest I had thought that that baby had arrested.

Q. It didn't cross your mind at all that it was Jordan Hines?

A. No.

Q. Were you then present, Doctor, for the entire resuscitation effort that was undertaken for Jordan?

A. Yes, I was.

Q When you arrived at Jordan's room who was present?

A. There was a nurse present.

Q. Do you know who she was?

A. I had only been on the ward for four days, so I didn't know the nurses all that well.

I didn't know them at all, but in retrospect it was Susan Nelles.

Q. I take it you have seen her picture, given the subsequent events in March 1981?

A Yes, it is from the media stuff.

Q. And you have started, we know on the prior Thursday on the ward and from what you have told us, I take it this was the first arrest -- perhaps you can tell us -- the first arrest that you had experienced on the cardiac wards?

A. That's correct.

Q. What was Miss Nelles doing when you arrived in the room?

A. She was applying cardiac massage.

Q. All right. Where there any physicians in the room?

A. No.

Q. Did any arrive after you did?

A. About one minute after I did, the cardiac arrest team arrived.

Q. Do you remember Dr. Costigan being there?

A. Yes, I do.

Q. Was he part of the cardiac arrest team?

C6

A. Yes, he was.

Q. Did he personally arrive within a minutes of your own arrival?

A. Yes.

Q. Do you remember Dr. Rose arriving at any time during the resuscitation effort?

A. No, I don't.

Q. Can I refer you to page 70 of the chart, Doctor. Page 70 is part of a lengthy note written by Dr. Costigan concerning the arrest and resuscitation efforts that were undertaken and you will see from page 70 that it would appear, according to Dr. Costigan's note that Dr. Rose was in attendance, I take it, to be at the end of the resuscitation effort, but in any event before the child was pronounced dead. Do you see that at the bottom of the page, Dr. Rose in attendance?

A. Yes.

Q. Do I have it correctly that you do not recall her being there?

A. Again in retrospect she probably came at the end of the prolonged resuscitation.

Q. Was it a prolonged resuscitation for Jordan Hines?

A. Yes it was.

C7

Q. How long did it last as you remember it?

A. In excess of two hours.

Q. Was that unusual or did you have any basis for knowing at that stage?

A. Well, since it was my first cardiac arrest on 4A I didn't know if it was unusual for that particular ward, so I can't really comment on it.

Q. Had you in your experience in other wards in the Hospital been present when a patient went into arrest and attempts were made to resuscitate the patient?

A. Yes.

Q. In comparison to your prior experience on other arrests, although not on the cardiac wards, was it an unusually long resuscitation for Jordan Hines?

A. Yes.

Q. Do you remember Dr. Su , one of the cardiac fellows being present during the resuscitation as well?

A. Yes, I do.

Q. What was your reaction, Doctor, when Jordan Hines could not be successfully resuscitated and ultimately was pronounced dead?

C8

A. Well, this was, as I mentioned, a normal baby, apart from the pneumonia. In essence it was quite distressing and quite shocking; not only for myself but I think for everybody involved in the resuscitation.

Q. It was your impression, I take it, that others who had been there shared your degree of concern and your surprise that he had died?

A. Yes.

Q. All right. It appears to be unexpected?

A. Yes.

Q. Was there any discussion either during the lengthy resuscitation effort itself, or after the resuscitation effort while still on the ward that morning, as to what might have caused this child's arrest and his death?

A. In the frenzy of a cardiac arrest and when you are trying to speculate as to what might be the cause, no forthcoming answers came about.

Q. What about after the arrest and the resuscitation effort itself, were there any discussions, which you participated in between the physicians who had been present as to what might have caused the child's arrest and death?

C9

A. Since I was the resident on the cardiac floor and the residents and fellows of the cardiac arrest team were not familiar with the case, the general rule is you fill them in as to what condition that the child is and we did have a discussion after the arrest was completed and we could not come to any conclusion as to why this child suddenly took a turn to the worse.

Q. When you are saying "we" Doctor, to whom are you referring?

A. Dr. Su , Dr. Costigan and eventually Dr. Vera Rose.

Q. In your judgment at the time, Doctor, based on your personal observations of this child and what you knew of the tests that had been done and the test results, did you consider that pneumonia, if it did exist, would account for the child's arrest and his death, as you observed it?

A. No, as I said, the child was improving on the antibiotics after being in the Hospital for two days, so I did not -- that possibility didn't even cross my mind.

Q. Did any other physicians who had been present at any point during that resuscitation effort, be it Dr. Rose or anyone else, advance

any possible explanation which you heard at the time, as to why the child had died?

A. No.

Q. Did it seem then to you to be a general puzzle for all concerned?

A. That's right.

Q. And a general shock from what you have said?

A. That's correct.

Q. Was there any discussion that morning, Doctor, as you remember it, as to whether or not the death of Jordan Hines should be reported to the Coroner?

A. No, I can't remember that.

Q. One way or the other?

A. No.

Q. Were you involved in any discussion at you remember it, with respect to reporting of that death to the Coroner?

A. No.

Q. Doctor, when did you first learn or when did it first occur to you that Sudden Infant Death Syndrome was a possible explanation for this child's death?

A. Let's see, it would have been a

week ago when I was reviewing the chart and saw the pathological findings, the neuropathological findings.

C11

Q. I'm sorry, Doctor, do I have it that it was in the course of preparing for your testimony here that you first learned that since it had been raised as a possible explanation for Jordan's death?

A. That is right.

Q. Had it at any point following his death occurred to you as a possible explanation?

A. After I had read the pathology report.

Q. When did you first read the pathology report, the autopsy report?

A. I read it last Wednesday.

- - - - - - - -

DM.jc
D

Q. About a week ago?

A. Yes.

Q. At any time prior to seeing that report, that you read about a week ago, did the possibility of SIDS as an explanation for this child's death occur to you?

A. No, it didn't.

Q. And I take it from what you have said it was not raised with you by anyone else in the Hospital?

A. That's correct.

Q. How long did you remain on the ward that Sunday morning March 8th, Doctor, after Jordan Hines was pronounced dead?

A. I remained until the resident who was on call on the Sunday came in at 9 o'clock.

Q. And who was that?

A. It was Dr. Soulioti.

Q. Did you work on the wards yourself during the course of that day?

A. That day?

Q. Yes.

A. No, I didn't.

Q. Did you work that night, Sunday, March 8th, through to the morning of Monday, March the 9th?

A. No, I didn't.

Q. Were you present - I take it if you were not working that night you were not present for the arrest and resuscitation of a patient by the name of Barbara Gionas?

A. No, I wasn't.

Q. Were you familiar with this child, Doctor?

A. Yes, I was.

Q. You had seen her prior to her arrest?

A. Yes.

MS. CRONK: Could we have her chart please, Mr. Registrar, it is Exhibit 105.

Q. Doctor, I would refer you, if you would please, to page 73 of the chart; do you have that?

A. Yes, I do.

Q. You will see there that there are two nursing notes that appear at the top half of the page. Then there is a note that begins, it is dated the 7th of March at 1300 hours,do you see that?

A. Yes, I do.

Q. Is that your note, Doctor?

A. Yes, it is.

D.3

Q. When was it made?

A. At 1300 hours.

Q. I am sorry, on the 7th of March?

A. Yes.

Q. What were you in the course of doing?

A. Well, I was called to see this baby by one of the nurses because they were concerned about the change in the infant's heart rate.

Q. And what was the nature of the change?

A. That the baby, the heart rate had increased, that her respiratory rate also had increased and she had vomited twice.

Q. This then is the Saturday?

A. Yes.

Q. When you are called to see the baby?

A. Yes.

Q. What was your impression of her condition at that time?

A. She was an ill infant who needed close monitoring and some various investigations and that's why I ordered them done.

Q. You say you ordered the tests,

specifically what did you order, Doctor?

A. I suggested that they fluid restrict the baby and not give as much fluid as they had been giving; an electrocardiogram; a chest X-ray; serum electrolytes; blood gases and blood, urine nitrogen level.

Q. You ordered as well did you not that the next dose of the child's digoxin be held?

A. That's right.

Q. Why did you order that?

A. Because the last digoxin level which was done was five days previous and it was 1.9, and with this change both the - especially the heart rate and the vomiting I was concerned that there might be the possibility that there may be a higher therapeutic level of digoxin outside of the normal range.

Q. Were you concerned about the level of 1.9?

A. No, that is within the therapeutic range.

Q. What did you consider the therapeutic range for infants to be at the time?

A. Less than 2 nanograms per millilitre.

Q. And you have in fact recorded your impression of the child at the time, and you have listed it first as digoxin toxicity. The second I take to be congestive heart failure, is that correct?

A. That's correct.

Q. And the third?

A. The third is hyponatremia, which is not a diagnosis but a lab value impression, a clinical impression.

Q. Did you list these factors, in order of priority in the sense of your highest suspicion ranked first?

A. Well I ranked them in order of critical things, in that I wanted to rule out that there may have been a higher digoxin level than above the therapeutic range and that was my first imminent concern, I wanted to rule that out first off.

Q. What was there, Doctor, in what you personally observed of the child's condition at the time that led you to suspect digoxin toxicity?

A. As I mentioned the change in the heart rate and the vomiting.

Q. Can I ask you to turn to page 190 if you would, of the chart; do you have that, Doctor?

D.6

A. Yes, I do.

Q. I refer you to two orders starting at the middle of the page and continuing on to the bottom of the page, are these orders that were made by you following your observation of Barbara Gionas at approximately 1 o'clock on that Saturday?

A. Yes, they were.

Q. Did they confirm both your impression and the plan that you then had as to what further should be done for the child?

A. Yes.

Q. And you ordered, did you not, a number of tests including a chest X-ray?

A. Yes.

Q. I am referring to Item No. 3.

A. Yes, I did.

Q. And as well an EKG to be done?

A. Yes.

Q. Blood gas testing?

A. Yes.

Q. You ordered as well did you not in Item No. 6 a digoxin level on Monday morning?

A. That's correct.

Q. Did that order flow from your

D.7

concern at that time that the child might then be suffering from digoxin toxicity?

A. Yes.

Q. What would be accomplished, Doctor, by the holding of the next dose of digoxin?

A. Well if indeed the serum digoxin level was above the therapeutic range, and without knowing that, I would not want another digoxin dose administered without knowing the specific value of the digoxin level.

Q. Was it then a precautionary measure on your part?

A. Yes, it was.

Q. Were you suggesting, or did you intend to order that digoxin be discontinued for the child, or was it simply the next dose that you meant?

A. The next dose.

Q. Did the results of some of the tests that you ordered at 1 o'clock become available later the same day, in the afternoon?

A. Yes, they did.

Q. And did they confirm, or negate your impression of digoxin toxicity, or did they assist you in any way in assessing that possibility further?

A. They negated my conjecture that this might be digoxin toxicity because the level came back at 1.2, which is normal.

Q. Doctor, may we deal with it in stages. Indeed we know that you ordered a number of things at 1 o'clock in the afternoon; you ordered a chest X-ray, and EKG, blood gases be done, and you ordered a digoxin level as well. Did the digoxin level results come back before the other test results, or do you remember?

A. I don't remember.

Q. Because you see your order was that the level was not to be taken until Monday morning?

A. That's correct.

Q. So I would have thought on the basis of your initial order that in fact the samples had not been tested and the level would not have been available to you on that Saturday on the basis of your first order?

A. That's correct.

Q. My question then, rephrased, did you in fact obtain the results from some of the tests that you had ordered at 1 o'clock, on the same day?

D.9

A. Yes.

Q. And were those results of the chest X-ray, the EKG and the blood gas work done?

A. That's right.

Q. Can I ask you to refer to page 74 if you would again? At the top of page 74 - well, it appears to be a further note, Doctor, is it yours?

A. Yes, it is.

Q. And are the results of the chest X-ray, the EKG and the blood gas testing which you had ordered at 1 o'clock set out at the top of the page here?

A. Yes, they are.

Q. My question to you is this. Did any of those results assist you either in confirming or negating your suspicion of digoxin toxicity with this child?

A. Yes. On the electrocardiographic strip there was evidence of an increase - there was some abnormalities and an increased PR interval and atrial flutter which especially in children may be signs of digoxin toxicity.

Q. Did those findings then heighten your concern that the child might in fact be suffering from digoxin toxicity?

D.10

A. Yes.

Q. Was there anything else in those test results which you felt to be of concern with respect to that possibility?

A. The vomiting and that is borne out by the arterial blood gases which shows the (2) metabolic alkalosis.

Q. I am sorry, I didn't hear the last part?

A. Metabolic alkalosis which you can get from vomiting.

Q. And you in fact note your impression at this stage as well, do you not?

A. Yes, I do.

Q. At this stage it is confined to digoxin toxicity, that is your overriding impression, is it?

A. Yes, it is.

Q. And as a result of that did you change your orders?

A. I changed my orders to say to hold the dig. level over the weekend for 48 hours. I also suggested that they restrict fluids because at that point the sodium was still low.

Q. You say, Doctor, to hold the

dig. level over the weekend, do you mean hold the dig., the digoxin doses over the weekend?

A. That's right, for 48 hours.

Q. And you in fact ordered the digoxin level now, immediately, did you not, stat?

A. That's right.

Q. You indicated that you ordered that the child was to remain off oral feedings?

A. Yes.

Q. And as well fluid restriction was to continue?

A. That's correct.

Q. And as I read it at the bottom of your note, Doctor, you further ordered that atropine and Dilantin were to be held for the present?

A. Yes.

Q. Can you tell me please why you ordered that?

A. Well, because of the - when I reassessed the baby the baby's heart rate had come back down to normal and the baby was on atropine and atropine can increase your heart rate further. So I did not want to give another agent which would increase the heart rate again because that was the initial concern when the nurses called.

D.12

Q. Indeed as you referred to it in your note the child's heart rate had been up to 200 at that stage had it not?

A. That's right.

Q. Very high?

A. Very high.

Q. Dangerously high at that stage?

A. Yes, it was.

Q. Do you recall now what time of day it was that you read the balance of your notes that appear on page 74? You will recall you told us that your earlier notes were written at 1 o'clock as were your first orders. Do you remember how much later in the day or the evening the second set of notes was written?

A. I don't have a definitive time, but most of these results come back fairly quickly, I would imagine in the matter of hours.

Q. And again some time on Saturday afternoon?

A. Yes.

Q. Can I ask you to turn now to page 191 if you would of the chart; do you have that, Doctor?

A. Yes, I do.

D.13

Q. I am referring to the order at the top of the page, is that an order made by you?

A. Yes, it is.

Q. Can you tell me when it was made?

A. Unfortunately I can't because I didn't put in the time.

Q. Perhaps we can get at it this way, Doctor. As I read it:

"Serum digoxin level now please."

A. Yes.

Q. And digoxin was to be held both for the balance of that day, the Saturday, and as well on the Sunday?

A. Yes.

Q. Would it be fair of me to suggest that this was the order that you made as a result of recording of your observations of the tests made later in the afternoon on the Saturday?

A. That's right.

Q. Was a digoxin level in fact done stat or immediately in light of your instructions?

A. Yes, it was.

Q. And with what result?

A. It was 1.2.

D.14

Q. I ask you to turn to page 238 if you would please; do you have that, Doctor?

A. Yes, I do.

E/BM/LN
1

Q. All right. We have had this from other witnesses, Doctor, but as I read it on March 7th, 3:00 o'clock in the afternoon, according to the biochemistry printout, a sample was tested for digoxin and the recorded reading was as you suggest 1.2. Were you informed that Saturday afternoon or that Saturday evening what the result of the test was?

A. Yes, I was.

Q. And in what way were you informed? Did you receive this biochemistry printout or was it otherwise communicated to you?

A. No, I think I had phoned down to the labratory to get the result.

Q. All right. Were you on duty in the course of that night? I think I asked you this in connection with Jordan Hines but could I have the answer again, the Saturday night through to the early Sunday morning?

A. Yes, I was

Q. Did you see Barbara Gionas during the course of the long night shift then?

A. Yes, I did.

Q. Would you have seen her on rounds as you have said you did between 1:00 and 2:00 before

retiring for the evening?

A. I think the last time I saw BarbaraGionas was 2300, 11:00 p.m.

E2

Q. All right. And then did you see the child at any point again on March 8th, the Sunday, before you left that morning?

A. No, I didn't.

Q. What then was her condition at the last moment in time when you had seen her on the 7th what was your impression of her condition then?

A. She was also stable.

Q. Did you have any reason, given the results of the digoxin test which had been done and the results of the other tests which you had ordered to be concerned that she was in any imminent danger?

A. No, I wasn't.

Q. In your own mind was there any possibility that she was at risk of quick deterioration?

A. On my recollection, no.

Q. All right. And you have told us that you were on the ward until approximately, I believe you said about 9:00 o'clock in the morning when you were relieved by the resident coming on duty on the Sunday morning?

A. That's correct.

E3

Q. We know that Barbara Gionas was well and on the ward at that time. Did you come back in or were you on call that Sunday night?

A. No, I wasn't.

Q. When did you next work on the wards?

A. I came back in on Monday morning for regular duty at 8:00 o'clock.

Q. All right. And did you learn at that time that Barbara Gionas had died during the course of the long night shift?

A. Yes, I did.

Q. Who told you that, Doctor?

A. The initial person was Dr. Soulioti.

Q. Dr. Soulioti was one of the other residents at the time, was she not?

A. Yes, she was.

Q. All right. What was your reaction when you learned of Barbara's death?

A. Well, again, it was much like Jordan Hines, it was a surprise. As I mentioned, when I left the baby on the Sunday morning the baby was stable. So, again, it was a surprise.

Q. Was there as well Doctor a measure of surprise or shock in your mind, having

E4

regard to the fact that there had been two deaths over one weekend. Jordan Hines for whose arrest and resuscitation you had been present and Barbara Gionas for whose arrest and resuscitation you had not been present. Did that concern you, the fact that there had been two?

A. It concerned me. It was unusual not having worked on the cardiac floor but still it struck me as unusual that there were two successive cardiac deaths.

Q. We know Doctor you had only been there for several days, you were new to the cardiac ward?

A. Yes, I was.

Q. Did you at that time, that is, Monday morning when you were informed of Barbara Gionas's death, that would have been March 9th, were you at that time aware that there had in fact been a series of deaths on those wards, let's take it from the beginning of March, did you know that?

A. No, I wouldn't.

Q. The evidence before the Commissioner indicates that a patient by the name of David Leith died on March 6th, a patient by the name of Colleen Warner on March 7th and then of course Jordan Hines

on March 8th, Barbara Gionas on March 9th. So that by the time you came in on that Monday morning there had in fact been four deaths in as many days. Were you informed of that by any of your fellow residents or by any members of the medical or nursing staff on those wards?

A. Okay, the first one that you mentioned, David Leith, I recall that that child had died; the second one you had mentioned on the Saturday.

Q. That's Colleen Warner?

A. I have no recollection. I was on duty on Saturday and to my recollection that child did not die on Saturday.

Q. I'm sorry, she died in the early hours of Saturday morning which meant it was during the course of the long night shift when you have said that you were not on duty. The deaths were David Leith died on March 6th, Colleen Warner on the 7th. Just to help you with that, Doctor, David Leith died at 10:30 hours on March 6th, Colleen Warner at 3:40 a.m. on March 7th. That would have been, you see the long night shift of March 6th.

A. That's right.

Q. The early morning hours of March

7th when you were not there.

A. I was not on duty at that particular time.

Q. Well, my question to you this is, Doctor. On Monday morning when you came in and learned now that there had been another death, Barbara Gionas whom you had seen and whom you felt to be stable, were you told at that time that in fact this was the fourth in four days. Did you know that on the Monday morning?

A. Well, I had realized that there had been at least three deaths in the time that we had started on the cardiac unit to the Monday of March 9th.

Q. All right. You didn't know that there were four but you knew there had been at least three?

A. Yes.

Q. And that I take it added a measure of concern on Monday morning, quite apart from the fact that Jordan Hines and Barbara Gionas had died, now there were three, that was the troubling matter?

A. That's correct.

Q. Who were the other residents at that time posted to the cardiac wards, Doctor?

E7

You have mentioned Dr. Soulioti?

A. Dr. Rashida Mangera and Dr. Kantak.

Q. The four of you?

A. Yes.

Q. All right. Were there any discussions that Monday amongst the resident in which you participated concerning the fact that there had been two deaths over the weekend or concerning the fact that there had been three, as you knew it to be, during the three days since you joined the cardiac ward?

A. Yes, there was. We just expressed- I guess the best term is shock that there had been especially Jordan Hines and Baby Gionas that there were stable infants, clinically,and that they had died over the weekend and in the early hours of the morning. David Leith, from what little I know of him was an ill infant, so, at that particular point when the child had died when we first arrived on the ward, I had assumed that he had died from natural causes because of his severe cardiac condition.

Q. Did the concern then during this discussion amongst the residents seem to focus as you recall it on Jordan Hines and Barbara Gionas?

A. That's correct.

E8

Q. When did the discussion take place, Doctor?

THE COMMISSIONER: Excuse me just a moment. You said we expressed shock. Was it just among yourself?

THE WITNESS: It was among the residents, yes.

THE COMMISSIONER: Yes. There was no one else, you didn't take this to anyone else I take it?

THE WITNESS: No, I didn't.

THE COMMISSIONER: All right.

MS. CRONK: You anticipate me, sir, I am grateful.

THE COMMISSIONER: Yes, I have a habit of doing that.

MS. CRONK: I'm grateful, sir.

THE COMMISSIONER: No, no.

MS. CRONK: Q. To your knowledge, Doctor, did any of the other residents raise the concern or the matter with any of the staff cardiologists. You have told the Commissioner that you yourself did not, did any of the other residents?

A. Not to my knowledge, no.

Q. And so that I am clear, can you tell

E9

me when the discussion took place?

A. Monday morning; Monday, March the 9th.

Q. That was just after you had learned of Barbara Gionas's death?

A. That's correct.

Q You had not been there on the Sunday and you told us that you saw Barbara Gionas for the last time on that morning when you completed your rounds and left when the replacement resident if you will came on duty. Did any of the residents on Monday advise you or inform you as to what her condition had been throughout the balance of the day on Sunday?

A. I really can't recall. I think Dr. Soulioti said that she was stable for most of the day on Sunday and then I think one of the nurses was concerned about the baby's condition later that evening or it could have been in the early hours of Monday morning. Again, I am guessing as to the time. It may have occurred in the evening on Sunday as to when the nurses were concerned about Baby Gionas's condition.

Q. All right. And this information came to you from Dr. Soulioti?

A. Yes.

Q. What was your understanding of the nature of the concern, or were you told?

A. Just that the baby had taken a turn for the worst, had become very ill, that the baby may now have been in congestive heart failure.

Q. Did any of the residents with whom you were discussing these two deaths on the Monday advance any explanation for why either child had arrested and died; either Jordan Hines or Barbara Gionas?

A. No.

Q. Were any of you, including yourself, able to come up with any explanation that you thought was at least a possible answer for either of them?

A. No.

Q. Did anyone suggest to you Doctor on that Monday or on the days following that either of those two deaths might be connected in any way with the drug digoxin?

A. No, none whatsoever.

Q. Having regard to your earlier concerns with respect to Barbara Gionas did it occur to you on the Monday when you learned that she had died that digoxin might be involved in her death?

E11

A. No, it didn't cross my mind.

Q. Because you will remember of course, that on Saturday you had a very large concern, at least by late Saturday afternoon, about digoxin toxicity but I take it you had been reassured when the level came back and it was within normal range?

A. I was reassured when it came back to normal range and that her heart rhythm had returned to a normal sinus rhythm and that her heart rate had come back down to normal.

Q. And it did not occur to you on the Monday that there might be some connection between her death and that drug?

A. That's correct.

Q. Were you aware on the Monday, Doctor, that Jordan Hines had not been prescribed digoxin, did you know that?

A. I knew about it from the time the baby was admitted to Hospital.

Q. You knew that by virtue of the fact that you had been involved in his care?

A. Yes.

Q. Did you have any reason at all to suspect on that Monday Doctor or in the days

immediately following that digixon may have been connected with Jordan Hines' death in some way?

A. None whatsoever.

E12 Q. All right. Well, you have told us that those matters did not occur to you, nor did you have any basis to be concerned about them on the Monday. Did it subsequently occur to you that digoxin might be connected with either or both of those deaths?

A No.

Q. All right. Do you recall Doctor either on that day or in the days next following a visit by a biochemist to wards 4A and 4B for the purposes of removing some of the ward digoxin?

A. Yes, I do.

Q. When did that happen, Doctor?

A. Again the time sequence I am not sure of, but it happened probably a week following the weekend of Baby Hines and Baby Gionas death.

Q. We know Doctor that after Barbara Gionas died there were two further deaths in a very short period of time, that of Michelle Manojlovich on March 12th in the early hours of the morning on March 12th and Kevin Pacsai later in the day on March 12th. You were familiar as I understand it

E13

with the patient Kevin Pacsai?

A. Yes, I was.

Q. Did the visit to the ward by the biochemist that I have suggested to you take place before or after Kevin Pacsai's death?

A. In retrospect probably after.

Q. All right. And we know that following the death of Kevin Pacsai and Michelle Manojlovich there were some further deaths on the ward, a patient by the name of Kristin Inwood, a patient by the name of Charlon Gardner and then a patient by the name of Allana Miller on the 21st of March, the early hours of the morning on Saturday March 21st. Was the visit of this biochemist, with the dates of those deaths in mind, can you help us place the date when you saw the biochemist on the wards. You have told us it was probably after the death of Kevin Pacsai?

A. To the best of my knowledge it was after the death of Kevin Pacsai and before the death of Allana Miller.

Q. Well, can you help me Doctor, and perhaps we will come back to that, can you help me please what it was that you observed or what the nature of this visit was about?

E14

A. All I know is that myself and two of the other residents were standing on the floor and the biochemist went to the medication cupboard on unit 4B. He had some vials in his hand of digoxin and we inquired, as curiousity, why he was taking these vials.

- - - - - - - - -

Q. What were you told?

A. We were told that he was going to check, one, that the concentration of the digoxin in each vile was normal and perhaps these viles of digoxin were not outdated.

THE COMMISSIONER: Not dated?

THE WITNESS: Outdated.

MS. CRONK: Q: You said, Doctor, as I understood it, there were two other residents there at the time. Who were they?

A. Dr. Mangera and Dr. Soulioti.

Q. Where were you?

A. We were standing at the front counter of the floor and near unit 4B.

Q. I'm sorry, the front counter, you are referring to the nursing station?

A. That's correct.

Q. Were there any nurses present at the time?

A. No.

Q. Sorry?

A. No.

Q. You have indicated that the biochemist had some viles in his hand of digoxin?

A. Yes.

Q. Doctor, we have heard in other evidence here that digoxin at the time was available in three forms on those wards, in tablet form, in the oral elixir form as well as in glass ampules. When you use the word viles are you referring to any particular form?

A. I don't recall. There was a large bottle, so I am assuming it was the elixir.

Q. Did you recognize the biochemist who was on the ward?

A. I have very little to do with biochemists so I did not recognize the biochemist.

Q. Did you regard the fact that a biochemist -- I'm sorry, did the individual identify himself or herself as a biochemist?

A. I can't recall.

Q. It is possible he or she did and possible that they didn't?

A. That is correct.

Q. Whoever it was indicated that the digoxin they had was to be tested, both as to concentration and both to determine whether or not it was staledated, it was out of date?

A. That's correct.

Q. Did you regard the fact that the person was on the ward removing digoxin elixir for those purposes as being unusual?

A. Yes.

Q. Did it concern you?

A. Yes.

Q. As a result as having seen this individual remove the elixir did you inquire whether it was only being done on Ward 4B or that it was also being done on Ward 4A or did you know?

A. I didn't know, but I assumed that they were checking viles on both wards.

Q. With respect to the checking of the elixir, Doctor,I take it the individual had no other drug with him,it was only digoxin?

A. At a quick glance that is all I recall, yes, it was just digoxin.

Q. So the concern or the purpose for the testing appeared to be restricted to the drug, digoxin?

A. That's correct.

Q. My question to you, Doctor, is having observed that individual removing elixir from the Ward for those purposes, which were described to you did it cross your mind at that time that there might

be a connection between the drug, digoxin, and the death of Jordan Hines or Barbara Gionas?

A. I would have to say -- it is a difficult question to answer, but I would have to say no.

Q. Doctor, what did you think was happening? Why did you think the drug was being tested?

A. Just to make sure that the concentrations were okay, but I didn't link the checking of the viles to the two particular deaths.

Q. You told us, Doctor, as best you remember this incident, the biochemist being on the ward took place after Kevin Pacsai had died and before Allana Miller had died. Do I have that correctly?

A. Yes.

Q. We will come to that in a few moments but you had some involvement with the patient, Kevin Pacsai, on his admission to the Hospital, did you not?

A. Yes.

Q. So that at least with respect to those three patients you had known Jordan Hines. Correct?

A. Yes.

Q. You had known Barbara Gionas and you had known Kevin Pacsai and you have told us what your reaction for at least two of those deaths were, that they were unexpected in your mind and quite surprising?

A. Yes.

Q. Further that there was no explanation that you could advance, nor any, that insofar as you were aware, occurred to any of your fellow residents or to any of the others who had been present during resuscitation of Jordan Hines as to why they died. Is that correct?

A. Yes.

Q. In those circumstances, Doctor, why did you think digoxin elixir was being tested on those wards?

A. Putting one and two together, I mean whether it is my naivete, I didn't put one and two together but they were checking the elixir bottles in any way to try to connect digoxin, as a cause of death for these two particular babies. I thought it may just be routine, but I remember at the time it did not cross my mind that they were checking these elixirs as possibilities of the cause of death.

Q. Doctor, perhaps it is a

question of my language and framing the question. You told me that you regarded the incident as unusual. You told me that a few moments ago?

A. Correct.

Q. Was that, as you understood it, the impression of the other two residents?

A. Yes.

Q. And you have told me it was of concern to you, concerned you as being done?

A. That's correct.

Q. Was it your impression that it concerned them as well?

A. Yes.

Q. It was a matter of routine, I suggest and I think fairly would scarcely have been of concern to you and it wouldn't have seemed unusual to you. Isn't that fair?

A. It's a fair statement, yes.

Q. All right. I am simply asking you this, Doctor, and I am not suggesting that it crossed your mind at the time that digoxin may have been the cause of either of the deaths of those two children or that it may have accidentally or deliberately been given to those children in a way so that it caused their deaths. I ask you again, did

it cross your mind at that time or did either of the other two residents suggest, in discussion with you that there might be some connection between that testing and the fact there had been these deaths on the wards?

A. I can't speak for the other two residents, but for myself, no.

Q. Doctor, do you recall being interviewed by Commission staff to review your future evidence before the Commission?

A. Yes, I do.

Q. Do you recall your counsel Miss Chown, being there and Miss Thomson for the Hospital for Sick Children?

A. Yes.

Q. Do you recall representatives of the Commission staff being present as well on May 5th?

A. Yes.

Q. If I suggest to you, Doctor, that during the course of that interview when the same question was put to you, you indicated somewhat differently and suggested that it did cross your mind at that time. Does that accord with your recollection? Do you remember saying that on May the 5th?

A. I can't be sure, but I may have.

Q. Do you remember the climate of the discussions that day, Doctor? I know you can't help us as to the exact day. Would it be fair of me to suggest on the basis of what you have told us that there was concern, at least amongst the three residents, who had been there and observed this, and you were one of them, as to why that testing was being done?

A. Yes.

Q. And the three of you had been involved in a discussion on Monday, March 9th as to why Jordan Hines had died and why Barbara Gionas had died?

A. Correct.

Q. The same three residents?

A. Right.

Q. And within the space of a week, because I think you told me it was as late as a week that there was a biochemist on the ward removing digoxin elixir for testing and that you had never seen that done before?

A. Yes.

Q. You knew at that time, Doctor,

from what you have told us that Jordan Hines had not been prescribed digoxin ?

A. That's correct.

Q. So if there was a connection, put it that way, if there was a connection between the testing of the drug, the elixir, and the deaths of either of those two children in the case of Jordan Hines, that would have presented particular difficulties would it not, because he wasn't suppose to be on the drug?

A. That's right.

Q. Did you subsequently learn the results of the test that had been conducted by this individual?

A. Yes, I did.

Q. When was that, in relation to the time when you saw him on the ward removing the digoxin elixir?

A. It was a matter of less than a week, a matter of days.

Q. We will come to the deaths of Kevin Pacsai, Doctor, but at the time this individual was removing digoxin from the wards were you aware of any investigation being conducted by any of the staff cardiologists concerning the death of

Kevin Pascai?

A. No.

Q. Were you aware of any inquiries being made by Dr. Fowler concerning that child's death?

A. No.

Q. You think it was in a matter of days that you learned the results . What were you told about the results?

A. Told that the viles were not outdated and that the concentration of digoxin in each vile was appropriate.

Q. Do you recall who was present when you learned that?

A. The biochemist, myself and the two other residents.

Q. The same two residents that had been there before, Dr. Soulioti and Dr. Mangera?

A. That's correct.

Q. Were there any nurses present?

A. No.

Q. Could I just ask a few questions about Kevin Pacsai, doctor. You told us, or at least as I suggested to you, and I think you agreed with me that you were familar with this child,

that you had seen him on admission to the Hospital. Do I have that correctly?

A. That's correct.

MS. CRONK: Mr. Registrar, could we have Exhibit 106, please, Kevin Pacsai's chart.

Q. Doctor, do you have page 61 of the chart?

A. Yes, I do.

Q. All right.

Are the notes on page 61 and continuing over to page 63 yours?

A. Yes, they are.

Q. When were they made, Doctor?

A. The 11th of March, 1981.

Q. Was that at the time of the admission of Kevin Pacasi to the Hospital?

A. That is right.

Q. Did you personally examine the child when he was admitted?

A. Yes, I did.

Q. Where was that on the ward, or in the Emergency Department?

A. It was on the ward.

Q. Can you tell me, please, what your impression of his condition was based on

that examination at that time?

A. I gathered this baby was transferred down from Hamilton and when I examined the baby, apart from being somewhat pale, was in no distress and I had no clinical concerns from a cardiac standpoint.

Q. Was there any difficulty with respect to his heart rate when you observed him on admission?

A. No. I recorded his heart rate as 120 per minute.

Q. Was that normal given his age?

A. Yes.

Q. Was there any sign as to what you believe to be congestive heart failure at that time or anything that suggested it as a possibility?

A. No.

Q. Was the child, would it be fair to suggest in your judgement at that time that the child was stable?

A. That's correct.

Q. And you recorded your impression on page 62, did you not?

A. Yes.

Q. I am particularly interested, Doctor, in the last paragraph of your recorded impression and please tell me if I am reading it incorrectly? Perhaps you could read it for us. Could you read that last paragraph, beginning with the word, "Subsequently".

A. "Subsequently developed congestive heart failure on chest X-ray from March 8th with increased heart size and increased pulmonary vasculature and pulmonary edema. Subsequently went into shock and resuscitated as profoundly acidotic. Question of septic shock but cultures were negative. Now ? gentamicin toxicity . ? deseminated intravascular coagulation with prolonged PT PTT.

Q. Doctor, as I have understood what you have read from your note, were you on the basis of what you observed at the time of the admission, and what you knew of his history from the referring Hospital, concerned about the possibility of gentamicin toxicity?

A. No.

Q. Can you help me, please, what ' ? gentamicin toxicity' refers to?

A. Gentamicin is an antibiotic which has mainly side effects on hearing so I was not concerned with that, because we did get levels from Hamilton which were in the theraputic range.

Q. I'm sorry, Doctor, if you were not concerned about it can you tell, please, why your impression note reads: "? gentamicin toxicity"

A. This was my note which was taken from the notes from Hamilton.

Q. Are you saying, Doctor, this does not reflect your impression of the child on your examination of him?

A. My impression on this note was taken from when the child was seen in Hamilton on March 8th, prior to transfer, so my impression is from the impressions of the physicians who are looking after this child in Hamilton.

Q. I understand, Doctor, you had information available to you from the doctors in Hamilton at McMaster Medical Centre and you would have had that when the child came in to emergency. Correct?

A. Through the ward, yes.

Q. All right. Are you saying

then that you were merely recordihg at this page of the note information that came from McMaster and impressions that those physicians had or was it your intent, and did you, in fact, record your own impressions of that child?

A. No, these impressions, the fact that I said after the word, "Subsequently developed congestive heart failure on chest X-ray from March 8th".

Q. Yes.

A. It would have been my impressions just relayed from the impressions that the physicians in Hamilton had.

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Q. Were you then just re-recording in the notes what had been raised as a concern at McMaster?

A. Yes.

Q. Do I have it then that, as you understood it, the physicians at McMaster had been concerned or raising as a possibility gentamicin toxicity?

A. Yes.

THE COMMISSIONER: When was this, the shock? Is that the shock - it is awfully hard to understand. He specifically went into shock?

THE WITNESS: Yes, that occurred in Hamilton.

THE COMMISSIONER: There was no shock resuscitation then in Toronto?

THE WITNESS: No. All the resuscitation, the shock, the gentamicin toxicity plus the possibility of sepsis were all concerns in Hamilton.

MS. CRONK: Q. And as well the cultures that you referred to were taken and tested in Hamilton and they produced negative results there?

A. That's correct.

Q. Where then, doctor, on this page, do we find your own diagnosis on admission as to this

G2 child's condition, or do we find it on this page?

A. You do not find it on that page.

THE COMMISSIONER: What about the top one? Is that not yours, or is that also --

THE WITNESS: That again is from the --

THE COMMISSIONER: -- Hamilton, is it?

THE WITNESS: From the Hamilton physicians.

MS. CRONK: Q. Doctor, can you tell me what your provisional diagnosis was for Kevin Pacsai on admission based on your examination of him at that time?

A. This baby came down with a diagnosis of a fast heart rate. When I examined the child, as I mentioned, clinically he was stable and his heart rate was normal. So at that point we had not done any investigations. They were planning on doing some. The possibility of sepsis, the possibility of a cardiac arrhythmia were possibilities.

Q. And did you record that anywhere in his chart?

A. No, I didn't.

Q. Anything other than sepsis or the possibility of cardiac arrhythmia that occurred to you at that time?

G3

A. No.

Q. What was your own reaction to the suggestion of possible gentamicin toxicity?

A. I didn't think that was a possibility.

Q. Did you observe anything in the child's condition when you examined him which suggested it was a possibility?

A. Clinically it is a very hard supposition to make because there are not clearcut clinical findings apart from renal kidney impairment and some auditory loss and based on the clinical values of high gentamicin levels. So on that basis, I would only have to go on mostly laboratory data --

Q. I see.

A. -- as opposed to clinical.

Q. And you in fact did order a number of tests to be undertaken, did you not?

A. Yes, I did.

MS. CRONK: Sir, I have not made my best estimate, can we take a break now?

THE COMMISSIONER: Yes. All right.

MS. CRONK: We will come to the tests, doctor, when we return.

THE COMMISSIONER: Yes. All right. We will take 20 minutes.

--- recess.

G4

--- Upon resuming.

THE COMMISSIONER: Yes, Miss Cronk.

MS. CRONK: Thank you, sir.

Q. Doctor, we were discussing before the break your impression of Kevin Pacsai's condition on admission on March 11th. Did you at that time notice anything, be it a feature of his clinical condition at the time or anything which you noted of particular significance in the history that accompanied him to the Hospital, which caused you to suspect digoxin toxicity?

A. No. None whatsoever.

Q. You knew, however, according to the notes that you did make in the child's medical record, that he had been prescribed digoxin and had received digoxin at McMaster Hospital?

A. Yes, I did.

Q. The suggested plan for the child, as I understand it, was set out in your orders?

A. Yes.

Q. Could I ask you to turn to page 75, if you would please, of the child's record. Do we find on page 75 and continuing over to page 76 there the orders that you made at the time of the child's admission on March 11th?

G5

A. Yes.

Q. I note that they are set out in some detail, some separate 17 items. Was this in effect, doctor, a complete cardiac workup that you were ordering?

A. That's correct.

Q. You ordered, as I read it at Item No. 9, the diogxin level to be taken.

A. Yes.

Q. Can you tell me please why you ordered the digoxin level to be taken?

A. Because that was just thoroughness on my part.

Q. Was there anything that caused you at all to suspect that he may have been suffering from toxicity at the time so as to warrant an immediate level?

A. The fact that the child had been transferred from Hamilton on digoxin, I just wanted a baseline digoxin level.

Q. I notice as well that at Item No. 12 you did indicate and order a specific digoxin dosage that was to be administered to the child.

A. That's correct.

Q. And as well, if we look at Item

G6 No. 11, you ordered a specific dosage of gentamicin to be administered intravenously.

A. That's correct.

Q. And I take it, doctor, that if you had felt that there was substance to the suggestion that the child might have been suffering from gentamicin toxicity, you would not have ordered outright from his admission gentamicin intravenous therapy?

A. That's correct.

Q. Can you tell me, doctor, were the orders made at the same time as you made your notes that we have already reviewed of your observations of him on admission?

A. Yes. They would have been made shortly after my assessment of the infant.

Q. Do you recall now what time it was that you saw the child in emergency?

A. I didn't see him in emergency; I saw him on the ward.

Q. I am sorry.

A. I saw him at about 1500 hours on March 11th.

Q. About three o'clock?

A. Yes.

Q. Doctor, if you were concerned

G7 by an abundance of caution to obtain a baseline digoxin level, can you tell me please did you intend that digoxin therapy should commence in accordance with your order before the results of that level had been obtained?

A. No. I preferred to get the digoxin level before the digoxin dose that I prescribed was started.

Q. Was there anything in your orders, doctor, as reported at pages 75 and 76 or elsewhere in the chart, that indicates that the level results were to be obtained before digoxin was to be administered to the child?

A. No.

Q. Did you give any oral orders to anyone in that regard?

A. Yes, I did.

Q. To whom and what was the nature of your orders?

A. I don't remember to which nurse I gave it, but I suggested that they hold the digoxin dose until they get the level back.

Q. And was that at the same time as you wrote the orders?

A. Yes.

G8

Q. That then would have been approximately three o'clock in the afternoon of March 11th?

A. That's right.

Q. Did you, yourself, take a blood sample for the purposes of that digoxin level, doctor?

A. No. They would have been taken by the blood-taking team.

Q. Did you in fact observe a sample being taken for the purposes of that level?

A. No.

Q. Do you know whether or not the sample was in fact taken?

A. I don't know for a fact, but I presume so.

THE COMMISSIONER: I'm sorry, I didn't hear that, doctor.

THE WITNESS: I don't know for a fact, but I presume so.

MS. CRONK: Q. Doctor, later in the day on March 11th did you have occasion to see Kevin Pacsai again?

A. Well I went over the child with Mike Schaffer, who was a Cardiac Fellow, and he essentially agreed with my clinical impression and the

G9 orders I had written. That is the only other involvement I had with Kevin Pacsai.

Q. What time would that have been?

A. That would have been between 3:30 and five o'clock.

Q. Were you on call that night, that is the night of March 11th and the early hours of March 12th?

A. No, I wasn't.

Q. Do I have it then that you did not see Kevin Pacsai nor discuss his case again prior to this death following your discussion with Dr. Schaffer?

A. That's correct.

Q. Did you ever leave the Hospital at the end of the day on March 11th?

A. Roughly five o'clock, yes.

Q. Before you left the Hospital that day had you been informed as to the result of the digoxin level test which you had ordered?

A. No.

Q. And if I have understood you correctly, you did not know for a fact that a sample was taken, but you presumed that it had been?

A. Correct.

G10

Q. Doctor, to assist you with that, the evidence before the Commissioner to date indicates that the only ante mortem digoxin level available on Kevin Pacsai from The Hospital for Sick Children is that which was ordered from a sample taken by Dr. Costigan in the Intensive Care Unit on the morning of March 12th. The result of that level was greater than 10 nanograms. We have not seen either in the medical chart of Kevin Pacsai, nor in the evidence to date presented, any evidence of a level or a test that was conducted on March 11th. Did you, after March 11th, upon learning of Kevin Pacsai's death, make any enquiries to determine what his diogxin level had been on admission on the basis of the test that you ordered on March 11th?

A. I can't recall, but I don't think so, no.

Q. Did you ever hear any discussion about an ante mortem digoxin level on Kevin Pacsai dating from the time of his admission?

A. No.

Q. You have told us, doctor, that you left the Hospital as you recall it at approximately five o'clock on March 11th. Were you in the Hospital the next day, March 12th?

G11

A. Yes, I was.

Q. Did you learn at that time that Kevin Pacsai had been transferred to the Intensive Care Unit?

A. Yes, I did.

Q. Did you subsequently not learn of his death in the Intensive Care Unit?

A. Yes.

Q. Do you recall now who told you that he had died in the Intensive Care Unit?

A. I can't recall.

Q. Were you, on the basis of what you had seen, doctor, both in your initial examination of the child on the ward and on the basis of your discussion with Dr. Schaffer, concerned in any way as to the child's condition when you left the Hospital at five o'clock on March 11th?

A. None whatsoever, no.

Q. Do you have any reason to believe he was at risk of deterioration?

A. No.

Q. And certainly not in critical condition?

A. No.

Q. Were you surprised to learn that

G12 the child had in fact died in the Intensive Care Unit given what you had observed of that child's condition and what you knew of his condition?

A. That's right.

Q. Did you form any impression as to whether or not Dr. Schaffer was surprised as well?

A. I can recall discussing the case with him the following morning and he, too, was surprised.

Q. Was he able to advance any explanation as to why the child had in fact arrested and died in the Intensive Care Unit?

A. No.

Q. Did anyone else provide an explanation to you?

A. No.

Q. Did you seek one, doctor?

A. No.

Q. Do you recall when you learned for the first time that Kevin Pacsai had an ante mortem diogxin level prior to death of greater than 10 nano-grams?

A. Was I aware of that?

Q. Do you recall when you learned for the first time that his ante mortem digoxin level

G13 was greater than 10?

A. Last week when we reviewed the charts.

Q. You didn't know the actual level until approximately a week ago?

A. That's right.

Q. Did you know -- I take it you did know prior to that time that he had an elevated ante mortem digoxin level?

A. No, I just found out last week that his digoxin level was greater than 10.

Q. That is the actual number?

A. Yes.

Q. You learned that last week?

A. Yes.

Q. Without knowing the actual number, I take it you knew prior to last week that he had a high digoxin level during life, is that not the case?

A. No.

Q. Doctor, you were still working at The Hospital for Sick Children when Susan Nelles was arrested for the murder of Kevin Pacsai on March 27th?

A. Yes.

Q. And you knew she had been arrested for the murder of that child?

G14

A. Yes.

Q. Did you follow the press with respect to those children? Did you read some of the media accounts?

A. Yes.

Q. Were you not aware at that time that the suggestion was that the child had a high digoxin level during life?

A. I think I recall at post mortem the digoxin levels on Kevin Pacsai were elevated.

Q. When did you first learn that, that the post mortem levels were high?

A. Again last week, but I may have read it in the paper after Susan Nelles was arrested.

Q. Doctor, it may be a distinction that has only meaning for me. So I understand it, do I take it you learned the actual level, the number of Kevin Pacsai's post mortem level approximately one week ago?

A. That's correct.

Q. And you learned at the same time the actual number of his ante mortem digoxin level? About a week ago, you learned the actual number; is that correct?

A. Yes.

Q. And my question to you is this. Did you know at any time prior to that that he had an elevated post mortem or ante mortem level even though you might not have known the actual number?

A. No, I did not.

Q. Do you not recall hearing about that in the Hospital when you were still working at the Hospital at the time Susan Nelles was arrested for his murder?

A. That's correct.

Q. You don't recall reading about it in the press?

A. I recall reading about it in the press that they were suspicious of digoxin toxicity but I do not remember the exact figure that they quoted.

Q. I understand that, Doctor. But you knew that there was a problem with Kevin Pacsai's digoxin, did you not?

A. Yes.

Q. And you certainly knew that before the creation of this Commission, did you not?

A. Yes, yes.

Q. And did you not know that as a result of the charges against Susan Nelles in

H.2

March of 1981?

A. Yes.

Q. Although you might not have known the number you knew there was a problem the child had elevated digoxin levels?

A. Yes.

Q. I think maybe we have clarified it.

Doctor, there is one other matter that has left me in some confusion. You have told us that when you observed what you believed to be a biochemist on Ward 4B taking a sample of digoxin elixir for testing Kevin Pacsai had already died. Do I have that correctly?

A. Yes.

Q. All right. And you can't help us as to the exact date when that occurred but you have said it happened before Allana Miller's death?

A. Yes.

Q. All right. And you have also told us that you were not aware at the time of any investigation being conducted by the Hospital or the Cardiology Division into Kevin Pacsai's death, you didn't know that then?

A. No.

H.3

Q. All right. That suggests to me, Doctor, that at the time that you saw this biochemist on the ward and questioned him, as you have said you did, as to why he was taking the digoxin elixir for testing, you knew that Jordan Hines had died and his death was unexpected, is that correct?

A. Correct.

Q. You knew that Barbara Gionas had died and she appeared on your own observation to be a stable child and you were surprised as well by her death, correct?

A. Correct.

Q. You knew as well that Kevin Pacsai had died and you knew, based on your own observations of that child, that you were surprised by his death?

A. That's right.

Q. And you knew there was no explanation being advanced by anyone to your knowledge as to the cause of the death of any of those three children?

A. That's right.

Q. And you knew that your fellow residents were concerned because you talked to them about it?

H.4

A. That's right.

Q. All right. And I suggested to you that at an inteview that was conducted with the Commission staff on May 5th you had indicated, and to be fair to you I have sought the exact language of what you are recorded as having said and I suggest to you that you indicated that when you saw that biochemist on the ward and learned what he was doing that you indicated that you all thought that something was going on because otherwise the drug would not be checked, that you speculated then that there was a connection between digoxin and the deaths of those three children. I'm obliged to ask you again, Doctor, do you remember and did you in fact say that?

A. Yes.

Q. Can you help me please then, what has changed if anything between May 5th and today as you sit here which caused you this morning to think that you had not made that connection?

A. Well, the connection that I told you on Friday was that there may have been the concentration of vials of the digoxin or they may have been updated as to the possible cause of the deaths of these three children. I guess sitting here now it probably still is in the back of my mind but

H.5

in thinking about it over the weekend, you know, it was going through my mind and when I told you this morning I just had a change of thinking. But it is logical when I made the statement on Friday and thinking about it just over the recess that that still is a possibility.

Q. Well, did that thought in fact not cross your mind at the time?

A. That fact crossed my mind, yes.

Q. Did it also cross your mind at the time that that was a particular problem if it was true, if there was a connection, for Jordan Hines because that child you knew had not been on digoxin?

A. That's correct.

Q. All right. And did it then occur to you, in light of those two facts, that Jordan Hines' death might be accounted for by the fact that he might have received digoxin either accidentally or deliberately. Does your logic take you that far?

A. Well, accidentally. But it hadn't crossed my mind that it was intentional.

Q. All right. When you say that it crossed your mind that Jordan Hines might have received digoxin accidentally, that I take it was

a matter that would be of considerable concern to you?

A. Yes.

Q. Because you knew the child wasn't supposed to get it at all?

A. Yes.

Q. Was it also a concern to the other residents?

A. Yes, that's right.

Q. Did any of you raise that particular matter with any of the staff cardiologists, that is, the possible involvement of digoxin in the death of Jordan Hines and the fact that he might have received it accidentally?

A. No.

Q. Did it occur to you with respect to any of those three children at the time in light of what you observed, including your observations and discussions with this biochemist that there might have been foul play associated with the deaths of any of the three?

A. No.

Q. When did that occur to you for the first time?

THE COMMISSIONER: If in fact it did.

MS. CRONK: I'm sorry.

THE WITNESS: Well, after the arrest of Susan Nelles and all of this stuff that happened in the media.

MS. CRONK: Q. To your knowledge, Doctor, after the arrest of Susan Nelles on the charges involving Kevin Pacsai and others were there any further discussions amongst the residents or amongst any of the staff cardiologists of which you are aware concerning the possibility that Jordan Hines might have received digoxin?

A. I can't speak for the staff people but for the residents I have told you my view. I cannot recall what Dr. Mangera or Dr. Soulioti were thinking on their own.

Q. Well, did you discuss it further with either Dr. Mangera or Dr. Soulioti after Susan Nelles' arrest?

A. Yes.

Q. All right. Did you discuss it personally with any of the staff cardiologists or, to your knowledge, did either Dr. Mangera or Dr. Soulioti?

A. Well, we had a quorum where Dr. Rowe, the nursing staff and the cardiac fellows and the residents all got together and the possibility

of digoxin overdose was raised at that time.

Q. In connection with Jordan Hines?

A. In connection with all the babies.

Q. And specifally including Jordan Hines?

A. Yes.

Q. And when did that take place?

A. That occurred after the arrest of Susan Nelles and the week after her arrest.

Q. All right. And that possibility was raised then?

A. Yes.

Q. All right. Doctor, to be fair to you, you have told us as well that after you observed the biochemist on the ward taking the elixir for testing that you did subsequently learn the results of the test?

A. That's correct.

Q. And you were told at that time that the concentrations were normal?

A. Yes.

Q. And that the drug, at least the samples tested, were not stale dated, were not outdated?

H.9

A. That's correct.

Q. Did that provide you with any reassurance or did you take any comfort from that information given what had already crossed your mind?

A. Yes, I was relieved to find out that everything was okay.

Q. And you have told us that you received that information prior to the death of Allana Miller?

A. Yes.

Q. And so, that would be prior to the early hours of Saturday, March 21st?

A. That's correct.

Q. All right. And at that point, Doctor, when you learned that, did you have any continuing concerns at that time that Jordan Hines might have received digoxin? Was it something you thought about any further at that stage?

A. No.

MS. CRONK: All right. Thank you, Doctor. I have no further questions, sir, thank you.

THE COMMISSIONER: Fine, thank you. Now, Miss Thomson or Miss Chown, is this your client?

MS. THOMSON: Sir, if I may, I will defer to Ms. Chown and I may have no questions.

H.10

THE COMMISSIONER: Yes, all right, Miss Chown.

EXAMINATION BY MS. CHOWN:

Q. Dr. Kobayashi, I would like to simply review some of the issues that Ms. Cronk has raised with you. Starting off first of all with Jordan Hines. You have described to us that you were present for his resuscitation. Do you recall prior to that point having spoken to the parents?

A. No.

Q. And did you have occasion during the course of that resuscitation to attempt to contact the parents?

A. Yes, I phoned them during the resuscitation.

Q. Do you recall at this time whether you spoke to either Mr. or Mrs. Hines?

A. All I can recall is speaking to Mrs. Hines.

Q. And is it your recollection at this time that when you made that phone call the resuscitation was in progress?

A. That's correct.

Q. And were you also involved in participating in the resuscitation at the same time?

H.11

A. That's correct.

Q. What would you have told Mrs. Hines during this phone call?

A. I told Mrs. Hines that her baby had taken a turn for the worst, that Jordan had a cardiac arrest and that we were still actively doing CPR on Jordan and trying to revive him.

Q. Were you able at that point and if so did you tell her whether you considered the resuscitation would likely be successful?

A. No, I didn't.

Q. I am sorry?

A. No, I didn't.

Q. After that phone call did you have occasion to contact the parents?

THE COMMISSIONER: Just a moment. You didn't tell her that. Did you tell her the opposite? You didn't say anything about whether it would or would not be successful?

THE WITNESS: No, I didn't mention either way.

THE COMMISSIONER: Yes, all right.

MS. CHOWN: Q. Had you in fact formed any impression at that point in the resuscitation as to its likely success or non-success?

H.12

A. To Mrs. Hines?

Q. No, you yourself.

A. Well, when I called her we had been going on for a fairly lengthy time, I would say about an hour to an hour and a half and we did get some normal heart rhythms back. So, I thought that we did have a good chance of reviving Jordan Hines.

Q. If I understand your earlier answer you do not recall that you conveyed that impression to Mrs. Hines?

A. No, I did not.

Q. At the end of that phone call was it your impression that the Hines were going to come down to The Hospital for Sick Children?

A. Well, I was running back and forth between trying to get a hold of Mr. or Mrs. Hines and participating in the cardiac arrest and what I told them was that - well, I just outlined that I would call them back later on, depending on the result of the cardiac arrest, if it was successful or unsuccessful.

Q. Would you have told them during that phone call that it was not necessary for them to come down to the Hospital?

A. No, I think I left it up to

H.13

their choice whether to come down to the Hospital or not.

Q. After the resuscitation efforts had been terminated did you make another phone call to the Hines?

A. Yes, I did.

Q. And approximately what time would that have been?

A. It would have been about 5 o'clock.

Q. Can you assist us as to what time interval there was between your first and second call?

A. An hour.

Q. And what did you say in the second conversation?

A. That the prolonged cardiac resuscitation was unsuccessful and that the baby had died.

Q. And did you have occasion to meet with the Hines when they came into the Hospital shortly after the child's death?

A. Yes, I did.

Q. Were you present with Dr. Vera Rose?

H.14

A. Yes, I was.

Q. And did you and Dr. Rose sit down with both Mr. and Mrs. Hines and review the course of the resuscitation?

A. Not in great detail, just to the fact that we did get some normal heart rates back during the resuscitation and that it was a prolonged effort and we stressed to them again that this was unexpected and gave them our deepest regrets.

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Q. Do you recall at this point whether there was any discussion on the part of Dr. Rose or yourself, as to a possible explanation for the cardiac arrest that was given to the Hines?

A. I didn't give an explanation. Dr. Rose, being a cardiologist --

THE COMMISSIONER: Excuse me just a moment. Shouldn't this have been put to the client yesterday Mrs. Hines?

MS. CHOWN: My memory is that it was and that Mrs. Hines simply said that there was no explanation given.

THE COMMISSIONER: I don't remember this meeting having been put to her at all.

MS. CHOWN: Yes, I believe she --

THE COMMISSIONER: Was it?

MS. CHOWN: I believe she stated --

THE COMMISSIONER: She said that they walked down the corridor and Sui Scott said they were still working on Jordan Hines and it didn't look promising. A Doctor came in and was still trying and then about 6:00 o'clock a whole troop of people came in and it was at that point that Dr. Vera Rose -- You see, the story I don't know if it matters at all but the story was somewhat different from the story

I2

Mrs. Hines had told. It is conventional under those circumstances, if you are going to advance another story you at least put it to Mrs. Hines.

MS. CHOWN: I have not been able to find it in my notes at the moment. My memory was that in fact Mrs. Hines spoke about the meeting with Dr. Rose.

THE COMMISSIONER: She did speak about a meeting.

MR. TOBIAS: If I can be of some assistance. The exchange starts at page 2577 at yesterday's transcript, Volume 141. I believe that her evidence, and I am summarizing, rather than reading all of the evidence, that there was a specific conversation with Dr. Rose on that morning and her answer -- this is at page 2578, to determine what Dr. Rose said was:

"She wasn't sure why he died; so therefore in circumstances like this ...."

THE COMMISSIONER: What I am concerned about is the timing. You see, as I certainly distinctly got the impression from Mrs. Hines the resuscitation efforts were still going on when they arrived at the Hospital and perhaps I misunderstood that.

MR. TOBIAS: That was her evidence, sir.

THE COMMISSIONER: The evidence from the Doctor now is that they terminated, and in fact he

I3

had telephoned to say they had been unsuccessful. This was never put to Mrs. Hines. It may not matter. It may not matter at all but it wasn't put to her. I find it unconventional, I think I can put it.

MS. CHOWN: I take your point. It was my memory and in just looking at the transcript ---

THE COMMISSIONER: Yes, all right.

MS. CHOWN: Certainly at the top of 2578 it was ultimately communicated at some time to the Hines that the resuscitation had not been successful and the efforts had been ceased.

THE COMMISSIONER: As I understand from Mrs. Hines, she said her husband had received a call. They didn't tell her immediately, but the second call that there had been a further arrest, but not that the arrest had been terminated.

MS. CHOWN: Perhaps I can --

THE COMMISSIONER: Well, you can't do anything about it now, but I am just pointing out that my view is that if you are going to call this sort of evidence -- perhaps you weren't aware of it -- if you were going to call it you should have put it to Mrs. Hines when she was giving evidence.

Yes, Mr. Tobias.

MR. TOBIAS: If it might assist my

friend, Ms. Chown, I was going to deal with this in my cross-examination, but perhaps if you put the resuscitation flow sheet to this witness which was part of the zebra package, Exhibit 103, because that I4 sets out the times of the nurse making the notes recorded when the resuscitation effort stopped and it might be helpful. We may, as well, clear up this confusion over the time right now, Mr. Commissioner.

THE COMMISSIONER: Well, we don't clear up the confusion over the time at all because Mrs. Hines didn't know what time these calls took place, so that doesn't solve anything, of course.

MR. TOBIAS: I believe her evidence was the first call was about 4:20 a.m. and the second call would have been very shortly thereafter.

I agree with you, Mr. Commissioner, and I am not sure that anything vital turns up.

THE COMMISSIONER: If it is not important then I don't think we need to get too excited about it. You just carry on, Miss Chown.

MS. CHOWN: Thank you, sir.

Q. Ms. Cronk asked you when you first became aware that SIDS was proferred as --

THE COMMISSIONER: I'm sorry, I interrupted. I don't know whether you finished.

Did you finish the conversation?

I5

MS. CHOWN: I guess in fairness I simply wanted to ask whether he recalls any discussion of any possible explanation for Jordan Hines's death given to the Hines in the context of the discussion with yourself and Dr. Rose?

THE WITNESS: No.

Q. Do you recall some discussion about a desire for an autopsy during that conversation?

A. Yes, Dr. Rose posed that to the mother that an autopsy be performed.

Q. With respect to the question of SIDS, Ms. Cronk asked you when you were first made aware this was a possible explanation for the child's death and I believe your answer was that you first learned of this in the context of preparing to give evidence before this Commission?

A. That's correct.

Q. Were you aware of any discussion on the ward after Jordan Hines's death concerning the possibility of SIDS being an explanation of the death immediately after his death?

A. No.

Q. Were you aware at any point of the autopsy report being circulated among the doctors

in the months following his death.

A. Well when I read the neuro pathology report by Dr. Becker, his impression was that this was possibly a SIDS cause and his knowledge about SIDS is much more greater than mine obviously and I would just have to go along with his neuro pathological findings.

Q. My question was somewhat simpler than that. Were you aware, Doctor, in fact, the final autopsy report was not made available to the staff doctors on the ward when it was first completed and, in fact, they were not aware of Dr. Becker's finding of SIDS at or about the months following Jordan Hines death? Were you aware of that?

A. No, I wasn't aware of that.

Q. With respect to this incident of your recall of the biochemist coming to the floor, you have told us that you were having some difficulty at this point in time pinpointing exactly when that was. You have told us that you recall standing in the ward with two of the other residents. Does that assist you as to whether this would have taken place during the day or at night?

A. During the day.

Q. Why do you say that?

A. Because during the evening after 5 there is only one of us on duty, so it occurred during the day, either late morning or early afternoon, sometime midafternoon.

Q. All right. Was it a man or a woman that you saw?

A. A man.

Q. Can you give us any sort of description of this person?

A. Pretty non descriptive. He was tall, looked like that lawyer over there. (Indicating)

Q. I'm not sure which of these non descript lawyers you are pointing to.

A. He had dark hair, medium build.

MR. TOBIAS: Perhaps we could have a lineup.

THE COMMISSIONER: Are we really going to go searching for this biochemist?

MS. CHOWN: No, I was saying if it sparked his memory.

Q. Doctor, Exhibit 32(b), Tab 45, is a digoxin book of Dr. Ellis that has been filed as an Exhibit in these proceedings and I know you will not have seen this book, but if you turn to page 26 at Tab 45. Do you have that?

A. I have a 25 and then 26, yes.

Q. The left hand side of the page, page 26?

A. Yes.

Q. If you look down the left hand column, items 12, 13, 14 and 15, referred to some lots of lanoxin. Do you see that?

A. Well, I see a category of digoxin on the right hand column.

THE COMMISSIONER: No.

THE WITNESS: Is that what you are referring to?

MS. CHOWN: I am looking at the left hand column right opposite the numbers 12, 13, 14 and 15. We are on a different page here.

A. All right.

Q. Now, we have got the right page. If you look at numbers 12, 13, 14 and 15 on that page you will note that they are references to testing done on Lanoxin. Do you see that?

A. Yes.

Q. Do you see number 13 refers to lot 0J018EXP, by which I presume means expiry 83 September?

A. Yes.

I9

Q. At the top of page 26, the date of March 18, 1981, is given. I can tell you, Doctor, that we have checked with the biochemistry department and they have advised us that those four items refer to testing of stocks of digoxin. Is the fact of that testing being related to the 18th of March, 1981, assist at all in your recollection as to when you may have seen the biochemist on the ward?

A. Well, the fact that he made these reports must have antidated this report, so he probably came up a few days before that.

Q. You said to us it was the impression among the three of you, who were standing watching this gentleman on the floor, that it was unusual that he should be there doing, taking the vials for testing?

A. Yes.

Q. Do I have it correctly it was also your individual impression that at that time you made some connection with the series of deaths that had gone before this?

A. Would you rephrase your question.

Q. All right. At the time you observed this biochemist on the ward, was there, did you form an impression of some sort of connection

between his presence on the ward and the testing of the stocks of digoxin with the series of deaths that you were aware of had immediately preceded this?

A. The third time, the third answer I would say yes.

Q. Is it fair to say at that time that you were not harbouring any thoughts of any intentional overdose having caused any of the deaths of these children?

A. No.

Q. At that time where you considering or forming a connection with respect to any possibility of a medication error, that is an incorrect calculation of the appropriate dosage?

A. No. Those calculations made by the physicians who were ordering digoxin were all confirmed by their cardiac fellows or the staff, cardiologists and found to be correct.

Q. And you are referring now to the actual prescribed dosage?

A. That's correct.

Q. It was correct. Were you considering at the time whether there may have been any error in the calculation of the dosage when the drug was being drawn up?

A. No, I couldn't even speculate on that.

Q. All right. When you referred to the fact of a concern of some sort of accidental administration were you thinking of an administration of a concentration of digoxin that was inappropriate?

A. A concentration in the vial, that was the concern that I had.

Q. By that you mean some sort of manufacturer's error which would have presumably put too high a concentration in a vial marked with the regular inspected concentration?

A. That's correct.

Q. Is it fair to say at this point -- we have asked you to examine your memory on that occasion -do you recall at this point seriously analysing what the biochemist might have been doing and discussing at great length its connection with the deaths?

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A. No. What the biochemist was doing I gather was primarily being undertaken by the staff cardiologist,so from a resident input it was not paramount, so I didn't connect that.

Q. I believe you told Miss Cronk that you were not personally aware of any investigation being undertaken by the staff cardiologist at this point?

A. That's correct.

Q. Would it be fair to say that you assumed someone had instructed the biochemist to carry out his testing of the digoxin?

A. That is correct.

Q. Who did you assume that to be?

A. It had to be I presume one of the staff cardiologist, or Dr. Fowler was the Ward Chief at the time, it may have been him, or the Head of Cardiology, Dr. Rowe.

Q. Is it fair to say you had no direct knowledge of whether in fact either of those two men were conducting an investigation and whether they had spoken to the biochemist?

A. That's correct.

Q. You were simply making the

assumption that that seemed to be the logical course of events to explain his presence on the Ward?

A. Yes.

MS. CHOWN: Thank you. I have no further questions.

THE COMMISSIONER: Thank you Miss Chown. Ms. Thomson?

MS. THOMSON: None at this time, sir.

THE COMMISSIONER: Yes, Mr. Brown.

CROSS-EXAMINATION BY MR. BROWN:

Q. Doctor, my name is Brown and I act for Susan Nelles, a Registered Nurse at the Hospital for Sick Children. In respect of the resuscitation of the Baby Jordan Hines, you indicated that you were present throughout most of the resuscitation?

A. Yes.

Q. During the course of that resuscitation do you recall any discussion about the use of a pacemaker to assist in establishing the heart rate of the child?

A. Yes, I do.

Q. And do you recall who had that discussion?

A. It was mainly between the

cardiac fellow, Dr. Su, Dr. Costigan, and the anaethesiologist.

Q. Who was another doctor?

A. Yes.

Q. What were they discussing?

A. They were discussing whether they were going to pace this baby and try and get a normal heart rhythm back.

Q. Do you recall whether this discussion took place well into the resuscitation efforts?

A. Yes.

Q. It did; and as a result of this discussion did they reach a decision as to whether or not they would attempt to use a pacemaker?

A. Their conclusions were not to use, not to pace this baby.

Q. I take it from that answer that you did not observe the use of a pacemaker in the resuscitation of this child?

A. That's correct.

Q. Notwithstanding that a pacemaker was not used, do you recall any request made by a doctor to a nurse to obtain a pacemaker?

A. I can't recall that.

Q. Do you recall any discussion between two nurses as to whether they should go and obtain a pacemaker?

A. No, I can't recall that.

Q. Do you recall any argument amongst nurses as to whether they should go and obtain a pacemaker?

A. No.

Q. Do you recall Dr. Costigan saying to some nurses, "Calm down ladies"?

A. I can't recall that.

Q. Do you recall during the course of that resuscitation effort any arguments or any dispute amongst nurses on that particular matter?

A. No.

Q. And it is your best recollection a pacemaker was ultimately not used for assisting in the resuscitation of this child?

A. That's correct.

MR. BROWN: Thank you Doctor, those are all the questions I have.

THE COMMISSIONER: Thank you Mr. Brown. Ms. Rae?

MS. RAE: No.

THE COMMISSIONER: Ms. Cecchetto?

MS. CECCHETTO: Just a few questions.

CROSS-EXAMINATION BY MS. CECCHETTO:

Q. Doctor, my name is Lucy Cecchetto and I appear on behalf of the Crown and the Attorney General and the Coroners. Now you indicated that you came on the ward shortly before the Hinesarrest,correct?

A. Two days before.

Q. And if I understand your evidence within two days you have the Hines arrest, followed by the Gionas arrest on March the 9th?

A. Yes.

Q. Perhaps the witness could have Exhibit 383 please. Now, the next arrest that occurs - there are actually two arrests on the same night, the arrest of Manojlovich and the arrest of Pacsai, and you were involved in the Pacsai arrest?

A. No, I was involved in the Pacasi admission but not in the arrest.

Q. All right, I am sorry. Doctor you indicated that you were surprised at the death of Hines, correct?

A. Correct.

Q. And you were surprised at the

death of Gionas?

A. Yes.

Q. And you were surprised by the death of Pacsai?

A. Yes.

Q. And you were surprised by the death of Pacsai? And you had a discussion with the other residents and they similarly were surprised at these deaths?

A. That's correct.

Q. You didn't have a reason at the time that you could understand why the babies died, did you, why those three babies died?

A. No not at the immediate time.

Q. And did you feel that this was an inordinate number of deaths? I understand that you were new to the ward but did you still have a feeling that this was a great number of deaths for the period?

A. Yes. It was stressful, I mean, when you have three cardiac arrests in three sucessive evenings I found that unusual.

Q. Was there a lot of discussion among the ward about it, doctor, were you aware of

any ?

A. Yes, there was.

Q. Could you tell us the type of discussion that you were aware of beyond the discussion with the other residents?

A. It was mainly just with the residents and the cardiac fellow that these babies - that there had been a rash of baby deaths and they particularly were occurring after midnight and that the Baby Pacsai, Gionas and Hines were clinically stable.

Q. So at least you, Doctor, in dealing with these babies they didn't appear to you to be sick babies in the sense that you had expected or anticipated an arrest?

A. That's correct.

Q. And if you follow down on the list Doctor, are there any other babies that you were involved with?

A. I was involved with the Allana Miller.

Q. Were you surprised at her death, Doctor?

A. Yes.

Q. Now, would you, in the mornings

after these arrests had occurred, would there be a debriefing or a review of the arrest situation with the other staff members?

A. Yes. There would be a discussion with the residents, the cardiac fellows and the Ward Chief the following morning.

Q. And in those discussions would you indicate that you were surprised, or would there be an indication that there was surprise at these deaths?

A. Yes.

Q. Would there also be an indication that there was a feeling that the children were stable?

A. Yes.

Q. Prior to the arrest situation ?

A. Yes.

Q. So to that extent your superiors would have been aware of the fact that you were surprised at the deaths, and that as far as you were concerned the children that you had dealt with, namely Pacsai, Gionas, Hines and Miller, that there had been a feeling to stability prior to the arrest situation?

A. That's correct.

THE COMMISSIONER: I'm sorry, the questions was, "Your superiors"?

Well, I am sorry, the people that you had the review with in the morning, the staff cardiologist would they have been aware too?

A. We were all surprised.

MS. CECCHETTO: Thank you Doctor.

THE COMMISSIONER: Yes. Mr. Young?

MR. YOUNG: Sir, I have a few questions sir.

MR. TOBIAS: Sir, if I may just deal with one matter before Mr. Young begins?

THE COMMISSIONER: Yes.

MR. TOBIAS: I have received from my mail basket the original of the final discharge summary record from North York General Hospital, and my offices contacted Dr. Dworak, right now to try to get his authority to introduce that as an exhibit.

THE COMMISSIONER: I gave it a number, I think it was 410, because Ms. Cronk said she had a copy that could be copied.

MR. TOBIAS: I think that after lunch I will be able to give it to the Registrar.

THE COMMISSIONER: All right. It is Exhibit 410 and if you can get us a copy it is all to

the good. Yes Mr. Young.

MR. YOUNG: Thank you.

CROSS-EXAMINATION BY MR. YOUNG:

Q. Doctor, my name is David Young and I am one of the lawyers representing the Metropolitan Toronto Police Force and I do have a few questions for you.

I wonder if I might just confirm a few facts. I think to told Ms. Cronk that you had only been on the Cardiac Ward in the Hospital for Sick Children for a very limited period of time and that was during the month of 1981?

A. That's right.

Q. You began March 5th, did you?

A. Yes mid-day March 5th.

Q. That rotation ended on what date?

A. I can't recall but usually it goes for month, so I would say the beginning of April.

Q. The end of -

A. The beginning of April.

Q. A number of lawyers have asked you about Baby Hines. You have told us basically that you did deal with this baby and that you knew

by March 7th that the heart was structurally normal, is that right?

A. Yes.

Q. You knew his heart rate was normal by March 7th?

A. Well, during the day of March the 7th and March the 6th the heart rate was normal.

Q. And you found that during that day the chest was clear, isn't that something else you found?

A. On the chest X-ray?

Q. I think you told the Commissioner that in fact the chest was clear March 7th, I may have recorded your evidence wrong. Why don't you tell us about the condition of his chest as far as you knew on March the 7th?

A. Yes, clinically the chest was clear, had no abnormalities when I auscultated the chest, I just looked at the chest, and on chest X-ray the radiologist read it as showing no abnormalities

Q. Doctor would you agree with me that when this baby died you found that the death was sudden and unexpected?

A. Correct.

Q. And you were surprised, in fact you were shocked by this death weren't you?

A. Yes.

Q. And the next night Baby Gionas died, and I think you have told the Commissioner that once again you were surprised by this death is that right?

A. Yes, that's correct.

Q. And we go three days later and we have a baby by the name of Manojlovich who dies. Did you care for this child at all?

A. No.

Q. You didn't?

A. No.

Q. When did you become aware that this baby had died?

A. I did not become aware that this baby had died, it may have been the day after, that name does not stick out in my mind.

Q. Why is it you think you might have learned that the day after?

A. I'm just assuming that the baby died on the 12th, that there may have been some again, some discussion that we have the day after.

Q. That would be the normal

practice would it?

A. Yes.

Q. Would you have learned that this baby died during the evening ?

A. That I can't recall.

Q. You know that now though?

A. No.

THE COMMISSIONER: It depends on what we call the evening. You see there is - I would have thought the early morning.

MR. YOUNG: Early morning, fine.

THE COMMISSIONER: I don't know what the evening means but I thought the evening terminated at midnight doesn't it?

MR. YOUNG: I'm sorry Mr. Commissioner.

THE COMMISSIONER: I am told that it is a generation gap, but the evening for the young seem to go on a lot longer than it does for the old.

MR. YOUNG: As much as I would like to be in that generation unfortunately I am usually asleep by that hour as well.

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Q. Doctor, on that evening another baby passed away. Unfortunately, this baby's name was Kevin Pacsai.

A. Yes.

Q. And you recall dealing with this child?

A. Yes.

Q. I won't go through all of the evidence again, Doctor, but I think you told us once again that this baby was stable when you last saw the child?

A. When I admitted the child and when I left for the day the baby was stable, yes.

Q. And I think the following Monday you learned of this death, is that right?

A. No, I learned of it the next day.

Q. All right. And what were you told?

A. I was told that the baby deteriorated the late hours of the 11th of March and the early hours of March 12th. The baby was taken down to the Intensive Care Unit and subsequently died down there.

Q. So, once again you learned that a baby began its deterioration in the early morning

K2

hours, is that right?

A. Yes.

Q. Yes, and subsequently died?

A. Yes.

Q. Doctor, once again you were surprised by this death, weren't you?

A. Yes.

Q. Doctor, you mentioned to Miss Cecchetto that you had occasion to see another baby that we are interested in, and that was Baby Miller.

A. Yes.

Q. I wonder if you would be good enough to tell the Commissioner what, if any, recollections you have of Baby Miller; when did you first see that child?

A. I saw Baby Miller on Friday of March 20th, and I did not admit the child but we were making ward rounds again with Dr. Fowler and the four residents and the Cardiac Fellow. The parents were in the room. When we examined the baby it was the opinion of Dr. Fowler that the baby was in congestive heart failure. This would have been about ten o'clock in the morning. I subsequently gave some diuretics to take some fluid off the baby's lungs and I went back into the room, the baby was in the mother's arms --

K3

Q. Excuse me, Doctor, if I may interrupt. When did you return to the room?

A. I returned -- well, I gave the diuretic and I returned five to ten minutes afterwards. The baby was in the mother's arms, the respiratory rate had gone down considerably, the baby was in no distress and, in fact, the mother was feeding her daughter.

Q. Okay. If you could put a time to it, Doctor, when was the last time you saw that baby prior to its death?

A. The last time would have been in the late afternoon of Friday, March 20th, before I left for the day, which was five o'clock.

Q. All right. Doctor, you didn't participate in the attempt to resuscitate this child, did you?

A. No, I didn't.

Q. When did you learn that this child had passed away?

A. The fcllowing Monday morning.

Q. Who told you that, Doctor?

A. I cannot recall but I think it was one of the residents who happened to be involved in that cardiac arrest.

K4

Q. Doctor, from what you had observed of this baby, from the last time that you had seen the baby, you were surprised that this child died, weren't you?

A. Well, when I left on Friday, he was stable. I don't know how he did over the week-end.

Q. When you were told of the death, you were surprised?

THE COMMISSIONER: The baby died the next morning.

MR. YOUNG: Yes, early the next morning.

A. Yes, I was surprised, by my clinical evaluation on Friday.

Q. Doctor, did you have any involvement with Baby Cook?

A. No.

Q. When did you learn that a baby by the name of Justin Cook had died on Ward 4A?

A. The same Monday.

Q. That Monday morning?

A. Yes.

Q. And did anyone give you any sort of detail as to the terminal events that this

K5

child experienced?

A. No. All I know is that the baby came in through the Emergency Department, was taken to Ward 4A and then soon after had a cardiac arrest.

Q. Did you learn that it was in the early hours of the morning that this child passed away?

A. I can't recall but I believe so.

Q. All right. So at this point, Doctor, being on the ward for approximately fourteen days, by my count, and granted you haven't been involved with each of these babies, but ten babies had passed away?

A. Yes.

Q. Does that sound about right?

A. Yes.

Q. You have told us that you were surprised by some of these deaths. Most of the children that you had any involvement with you were surprised to learn that they had died, weren't you?

A. That's correct.

Q. Yes. You were shocked by some of these deaths?

A. That's correct.

Q. Yes. Doctor, would it be fair

K6 to say that by that Friday--the last time you worked on the ward prior to the Monday when you learned of Justin Cook's death was a Friday; is that correct?

A. Yes.

Q. And by that Friday, Doctor, would it be fair to say that you had some idea that the babies were dying in the early hours of the morning?

A. Yes.

Q. Yes. And when you returned on Monday, you certainly saw that trend continuing, didn't you?

A. That's correct.

Q. Doctor, would it also be fair to say that you realized on that Monday that most of these deaths were sudden and unexpected?

A. Yes.

Q. Now, Doctor, a number of witneses have come before the Commissioner and have said that they didn't see any sort of pattern, and granted, Doctor, I do tell you they were on the ward a lot longer than you were, but just so I have it straight, you, in those fourteen days, did see a pattern to those deaths, didn't you?

A. A pattern in the fact that they were occurring in the early hours of the morning, yes.

K7

Q. And that they were sudden and unexpected?

A. Yes.

MR. YOUNG: Thank you, Doctor.

THE COMMISSIONER: Yes. Well, we will rise but I think we might take a poll.

MS. CRONK: Thank you, sir.

THE COMMISSIONER: Miss McIntyre, how long will you be?

MS. McINTYRE: I anticipate being fifteen minutes.

THE COMMISSIONER: Mr. Olah?

MR. OLAH: No questions, sir.

THE COMMISSIONER: Mr. Labow?

MR. LABOW: Fifteen to twenty minutes.

THE COMMISSIONER: Mr. Tobias?

MR. TOBIAS: Half an hour to three-quarters of an hour.

THE COMMISSIONER: And Mr. Shinehoft?

MR. LABOW: I think Mr. Shinehoft expects to be fifteen to twenty minutes as well.

THE COMMISSIONER: Yes. Well, we will obviously get to Dr. Bunt today. I would like to get to that because I want to proceed certainly with Phase II arguments tomorrow.

K8

MS. CECCHETTO: He will be available this afternoon.

THE COMMISSIONER: Yes. I think he is probably safe until the break, but you will have him then so that we can complete him?

MS. CECCHETTO: Yes.

THE COMMISSIONER: Yes, Mr. Olah?

MR. OLAH: Mr. Commissioner, do you expect to discuss the issue of submissions, oral submissions, whether we are going to have some indication from Commission Counsel as to what the basis of what some of the other's submissions are going to be?

THE COMMISSIONER: Well, we are certainly going to do that at some time. I don't consider that as urgent, perhaps I'm wrong, as a lot of other things we have to do. I want to find out as soon as we can what evidence, more evidence if any, we are going to have in Phase I. I want to find out what the procedure, if any, will be in Phase II.

MR. OLAH: You see, my problem, sir, is this. I don't expect to be here tomorrow because I don't expect to be involved in Phase II and I am wondering what sort of --

THE COMMISSIONER: Well, you will

K9

certainly find out. Have you got any submissions on the matter?

MR. OLAH: On the...?

THE COMMISSIONER: On the question of argument for Phase I.

MR. OLAH: Well, I would like to know what is happening there so that if a requirement is there for me to make submisssions, I will make them.

THE COMMISSIONER: Well, we will know better as soon as we discover this afternoon what, if any, evidence is going to be called, further evidence is going to be called in Phase I.

MR. OLAH: Thank you, sir.

THE COMMISSIONER: That, I would like to cover this afternoon, if we get time.

Yes, Mr. Tobias?

MR. TOBIAS: Just one quick question. Do I take it that tomorrow at the end of our discussion you will be advising counsel as to how long you intend to give them to prepare argument, because some of us of course are in difficulty?

THE COMMISSIONER: Tomorrow, I thought we were talking about Phase II. Are we not going to talk about Phase II tomorrow?

MR. TOBIAS: I was under the impression

K10

that you had also wanted some input from counsel as to the question of how long --

THE COMMISSIONER: Well, I want that some time but it is not as immediate. What I would like you to be doing in your spare time, if you have any, is preparing for argument so that by the time we finally get around to it you will say, well, I am ready now, so we might as well proceed tomorrow. It is an unlikely event.

MR. TOBIAS: I would love to accommodate you, sir, but I agree with your observation.

THE COMMISSIONER: You don't think that is likely. Well, you are probably right, you are probably right. Well, there is no point in discussing when we are going to have argument until we know that the evidence is all in. As soon as that is all in, then we will certainly discuss argument at the first convenient opportunity. But one thing is going to happen and that is, tomorrow we are going to be discussing Phase II and maybe we will have time tomorrow to do something about Phase I, I don't know. But maybe we will still have evidence to call and, if that is so, we are not going to discuss Phase I until that happens.

All right, 2:15 then.

--- luncheon adjournment.

RD.jc
AA

--- On resuming at 2:15 p.m.

THE COMMISSIONER: Yes, Miss McIntyre?

MS. McINTYRE: Thank you.

CROSS-EXAMINATION BY MS. McINTYRE:

Q. Doctor, my name is Elizabeth McIntyre. I represent the Registered Nurses' Association of Ontario and various individual nurses. I have a few questions for you.

First of all, with respect to the Hines' death you told your counsel that you recall The meeting between the parents of the Hines child, yourself and Dr. Rose?

A. That is correct.

Q. At that meeting the possibility of an autopsy was raised?

A. Yes.

Q. What was the response? Was it Mrs. Hines that was --

A. No, both parents were in the room. They were both very upset and they talked over between themselves quickly and did not want an autopsy initially.

Q. Okay. Generally, when a patient dies, as between doctors and nurses, whose responsibility is it to initially inform the parents

AA.2

that the child has died? Would that be the doctor's responsibility?

A. Yes.

Q. I take it the nurses on the floor would follow up with the parents when they came in; is that right?

A. Yes. They would put their input into what had happened and provide support, emotional care.

Q. With respect to the question of an autopsy would that also be the primary responsibility of the doctor or doctors involved to raise the issue of autopsy with the parents?

A. Yes.

Q. Okay. Would the same be true as to discussing the cause of death with the parents?

A. Yes, that would be the doctor's responsibility.

Q. Okay. So again, the nurses would follow up and perhaps answer questions and provide comfort, but it would primarily be the role of the doctor?

A. Through all the other things, yes.

Q. Okay. I had understood from

AA.3

your evidence that while you were at the Hospital during the period of July 1980 to March of 1981, that you had first started working on the cardiology floor in March of '81. Is that right?

A. That is correct.

Q. And you, at that point, had completed your internship and you were in your first year of residency or your second year of residency after completion of the internship year; is that right?

A. I was in my second year when I was doing cardiology rotation.

Q. Am I wrong in assuming that that is the first time that you had worked on the cardiology floor was in March of 1981?

A. That is correct.

Q. Is that correct?

A. Yes.

Q. Okay. You were there with three other residents; is that right?

A. Yes.

Q. Would you all have started on that service at the same time?

A. No. The two senior residents, that is third year residents would start on the Tuesday.

A.4

Q. Yes.

A. Two days before the junior residents would start.

Q. But you would have all started near the beginning of March then with that two-day difference?

A. Yes.

Q. You had one Fellow, who I believe was Dr. Schaffer at that time?

A. That is correct.

Q. And he would have started on the floor approximately the same time?

A. That is right. They do monthly rotations as well.

Q. There would be a new staff cardiologist assigned approximately the same time?

A. That's right.

Q. So at the beginning of March there would have been a new set of doctors right from the cardiology down to the residents; is that right?

A. Yes.

Q. I want to ask you a little bit about your schedule, as a resident. I take it that you worked Monday to Friday during the day?

A.5

A. From eight to five.

Q. So those were your set hours. I take it that frequently you would work a bit longer than that; is that right?

A. That is true, yes.

Q. What was your routine in terms of when you would come to the Hospital in the morning?

A. Well, we would all come at 8 a.m. and, depending on who was the staff person we would make rounds every day or in Dr. Fowler's case it was every day.

Q. So you would do rounds, et cetera. I didn't want to go into that in a lot of detail; I was more interested in your hours. You have said that generally you would, your shift would be finished at five. I take it that is if you weren't on call?

A. That is correct.

Q. Would you leave the Hospital always at five or would you sometimes stay later if you were busy or if you had admissions?

A. You would stay later if there were extra admissions, if there was a child that you were concerned about, if you hadn't finished your daily work chores. You would stay beyond five.

Q. I'm sorry, would it be common for you to be there until maybe six or seven in the evening even if you weren't on call?

A. Yes.

Q. I take it when you were on call you would be there through the entire evening and night?

A. That's correct.

Q. How frequently were you on call when you worked on the cardiology floor?

A. It worked out to approximately one night every three to four.

Q. So with four residents I take it that you split the assignment between the four of you?

A. That's right.

Q. And it would only be one on call for each night?

A. That's correct.

Q. When you were working on other areas of the Hospital would the same be true? Would you generally be on call one night out of every three or four?

A. One in three usually.

Q. That was throughout your

A.7

residency year?

A. That's correct.

Q. Now, then, when you were on call I take it you would be, you would spend part of the evening around the cardiology floor?

A. You would spend most of the time around the cardiology floor.

Q. Until you went to bed, I take it?

A. Until you went to bed.

Q. You would be doing your rounds of patients I take it?

A. Well, since I just started the floor what you would be doing is going through the charts to get to know the patients. You would examine the patients, since they are all new to you, and that is basically what you would be doing.

Q. You also, I take it, had a certain amount of paperwork to do in preparing notes for the file, et cetera?

A. Well, when you come on to any new service you have to write an on-service note which means you have to review what has gone on previously, as far as investigations, changes in the clinical status of the patient and try and tie everything together and what the problems are that

A.8

you have to deal with from there on in.

Q. I take it even after you became familiar with the floor you would still spend a lot of the evening on the unit when you were on call; is that right?

A. Yes.

Q. It would vary, I suppose, depending on the condition of the patients at the particular time?

A. Yes, but most nights, especially cardiology since it is a large floor and there are a large number of patients, you tended to stay on the floor when you were on call a great deal of the time.

Q. Okay. That would be until you went to bed?

A. That is right.

Q. Which I assume would be somewhere around midnight, is that accurate?

A. That is variable, depending if one of the nurses had a concern about one of the children. If you had any doubts or concerns about the status of the children, so 12 o'clock is an arbitrary figure. It could be much later or it could be earlier.

Q. So I take it it wasn't uncommon

A.9

for you to be on the unit after midnight?

A. That is correct.

Q. And, in fact, on the night of March 7th and 8th you told us you did rounds at 11 and you did rounds again around 1 o'clock I believe?

A. That's right. What I think I did was I -- with the nursing staff at 11 o'clock asked if there were any problems and then I made rounds at any of the children that they were concerned about and then I just checked in on basically all of the children to make sure that they were stable.

THE COMMISSIONER: Didn't I hear somewhere that the sleeping charts were on the same floor?

THE WITNESS: That's correct.

THE COMMISSIONER: On the 4th floor?

MS. McINTYRE: I was going to get to that --

THE COMMISSIONER: I am sorry, it's all right.

MS. McINTYRE: -- in a minute.

THE COMMISSIONER: Thank you. I am suffering from that disease even more today than usual.

MS. McINTYRE: Q. Okay. So you would then do your rounds before you went to bed, is that

A.10

what you have said?

A. Yes.

Q. Can you tell us if the Fellow might be around the cardiac unit during the evening, as well?

A. The only occasion that that would happen is if a resident, junior or senior, was concerned about a patient, then they would call in the Fellow and he would, he or she, would come in and look at the child.

Q. On the cardiac units how common would that have been? Can you give us an idea?

A. Speaking from one month's experience, I mean that was a hairy month, so it happened a lot.

Q. So there was a Fellow around a lot in the evenings?

A. Yes.

Q. Might that be the same as a resident up until midnight or even afterwards if there were a problem on the floor?

A. Yes.

Q. Okay. Now, after you finally did make it to have some sleep, that was the on-call room, is that what you referred to it as? That is

A.11

on the 4th floor, as the Commissioner mentioned?

A. That's correct.

Q. How accessible is that to Wards 4A/B?

A. 30 seconds walking distance.

Q. 30 seconds walking distance. I take it that you are not in there alone, but residents from all over the Hospital share that accommodation, do they?

A. That is right. That has changed.

Q. But we are talking at that time, back in 1980-81.

A. Yes, but it would be shared with all the residents who are on call.

Q. Right. Can you give us any idea as to how many on a particular night there would be on call from the entire Hospital?

A. Just medical residents?

Q. No, how many residents in total would be using the 4th floor on-call accommodation?

A. There are also some accommodations on the 3rd floor at that time, so I am guestimating as to 20.

Q. 20 residents?

A. 20-30.

Q. Okay. That is on the 4th floor?

A. 3rd and 4th floor.

Q. 3rd and 4th floor. Okay. Is that sort of half and half on each floor?

A. Roughly, yes.

Q. Okay. So we have 10 to 15 residents within 30 seconds of Wards 4A/B during the night, during that period of time?

BB/DM/LN
1

THE COMMISSIONER: I don't understand this, I thought there were 20.

THE WITNESS: Approximately 20.

MS. McINTYRE: 20 to 30, sir.

THE COMMISSIONER: 20 to 30?

THE WITNESS: Approximately.

THE COMMISSIONER: I missed that, I am sorry.

MS. McINTYRE: On the 3rd or 4th floor and he said that half would be on each.

THE COMMISSIONER: I just thought he said 20 and you somehow got half of that as 15.

MS. McINTYRE: My mathematics are not terrific.

THE COMMISSIONER: They are excellent, they are better than mine.

Q. So these residents I take it would not remain in the on-call room for the entire night, they would leave from time to time?

A. They would leave if there was an admission during the evening through the Emergency Department; they would go to their respective floors if there was a concern about a child.

Q. Okay. So we have got admissions.

BB2

We have got, if there is a nurse calls, a nurse calls that there is a concern about a child on any particular unit?

A. Yes.

Q. The resident would go to the floor, is that right?

A. Or if there is a medication that has to be given intravenously then the resident would do that as well.

Q. And I take it also with respect to a code 23 or a code 25 that the residents would go to the respective floor where the call came from, is that right?

A. That's right.

Q. Can you tell us, first of all with respect to the cardiology floor, how common it was to get a call where you actually had to go back to the floor?

A. Me personally, or residents in general?

Q. Well from your experience, how often do you get to sleep through the night from 1:00 o'clock or whatever until 7 without getting a call from the cardiology floor during that month of March?

BB3

A. You would be able to generally, if you went to bed about 2:00 o'clock, you could sleep through to 8:00 o'clock.

Q. So things quietened down from 2 to 8 before that they were busy?

A. They were not busy, but depending on the resident he or she happened to be on the ward just making sure things were okay.

Q. So do I take that before two it would be common to be on the floor but after two it would be less common, is that fair?

A. Whether you chose two again as an arbitrary figure, I mean, it depends on the number of sick children, it depends on the resident, it depends on the number of questions that the nurses have, so it varies.

Q. I understand it is very hard to tie it down precisely. I am just trying to find out what the general condition was. Was there a difference between cardiology and the other floors of the Hospital in your experience?

A. With some other wards, the general infant wards and the infectious disease wards you would have to get up much more often because admissions would come through the evening and past midnight

BB4

through the Emergency Department.

Q. And that there might also be, after 2:00 o'clock, might those residents be called?

A. Yes.

Q. And when they were called, I take it if they were sleeping on the 4th floor, it was required to get up and go through the 4th floor to go where they were going?

A. No. They would take the centre elevators to whatever floor they had to go to.

Q. But that would require them to be on the 4th floor, would it not if that is where the on call room was?

A. That's correct.

Q. And on the weekend I take it things were the same as during the week, except you were also on call during the day as well as on the night shift?

A. Yes.

MS. McINTYRE: Thank you very much, those are my questions.

THE COMMISSIONER: Thank you. Mr. Olah?

MR. OLAH: I hate to disappoint you, sir, I do have a couple of questions.

THE COMMISSIONER: Yes. All right.

BB5

CROSS-EXAMINATION BY MR. OLAH

Q. Doctor, my name is Olah and I act for one of the nursing assistants on the team, quasi member of the team by the name of Janet Brownless. A couple of things that I wanted to clarify with you if I may. I am not clear, because you were virtually on daily, would have daily rounds and discussions about each of the children while you were on the cardiaology rotation?

A. That's correct.

Q. And that would occur sometime in the morning before you went on rounds?

A. No, that would occur with the Ward Chief.

Q. With the Ward Chief. If you were on at night, if you had been on call during the night would you still be in attendance at those meetings?

A. Yes.

Q. So that all of the Fellows would be at all the meetings on a daily basis?

A. All the residents plus the cardiac Fellow assigned to that -

Q. I am sorry, all the Residents, the cardiac Fellow and the Ward Chief?

BB6

A. That's right.

Q. So that in effect through those meetings you would have known about each of the children that would have died even though you may not have been on for the death?

A. That's correct.

THE COMMISSIONER: Well, I am sorry, does that follow, the meetings take place the morning after do they not?

THE WITNESS: The meetings take place every morning.

THE COMMISSIONER: Well, you are off for two days, does that not happen? I don't know I'm just being a stickler.

THE WITNESS: No, if you are off for the weekend.

THE COMMISSIONER: Yes.

THE WITNESS: The rounds would occur on Monday morning.

THE COMMISSIONER: Are you never off for two days?

THE WITNESS: No.

THE COMMISSIONER: You are not allowed that sort of luxury?

THE WITNESS: No, not like lawyers I guess.

BB7

THE COMMISSIONER: Lawyers just take from Thursday to Tuesday. The nurses are the same, are they not?

THE WITNESS: The nurses schedule is different, they work on a shift basis.

MR. OLAH: They work 12 hours I think.

THE COMMISSIONER: I was wondering when you were describing this 2 to 8, do you have to work after that, do you have to go back to work or do you go home, what happens?

THE WITNESS: No, you work the next day. Despite the fact that you are on call and no matter how busy the evening may be that you are on call, you are still expected to put in a full day the next day.

THE COMMISSIONER: I don't believe it is any part of my mandate to report on the abuse of doctors, so I'm not going to follow it any further.

Q. Doctor, you may think that lawyers have easier hours but I can assure you they don't. Any way what I wanted to -

THE COMMISSIONER: Nor is it my mandate to report on the abuse of lawyers.

Q. What I wanted to more to Doctor is - was that essentially by March 13th you would

BB8

have known about all of these deaths on the ward from Leith on to Inwood, that is Leith, Warner, Hines, Gionas, Manojlovich, Pacsai and Inwood?

A. Yes.

Q. And I take it you must have been very concerned because here you had just come on your rotation and you have got something like 6 deaths in 7 days?

A. That's correct.

Q. Did you check with the people who had been on rotation prior to you to see how many deaths they had experienced during their rotation there, that is the month before?

A. No, I didn't.

Q. Now you have told Mr. Young and you told Ms. Cronk that you noticed a pattern emerging. I wanted to question you about something a little different. That is the time these children died, and got into trouble. Did it ever become, did you ever become conscious of the fact that the children seemed to get into trouble in a very narrow band of time. For instance Warner got into trouble at 3:00 o'clock in the morning; Hines at 4:00; I will exclude Gionas for the moment. Manojlovich got into trouble at around 2:30 in the morning; Pacsai 3:45; Inwood 2:00

BB9

o'clock; Gardner at 3:30; Miller at 1:45; Cook at 3:45. Was that something that you became aware of that these children seemed to get into trouble in a very narrow band of time?

A. Yes. As I expressed earlier it was a concern that all of these babies were getting into problems after midnight and at the times that you have suggested.

Q. Was that something that you found to be usual or unusual Doctor?

A. Usual and unusual, under what circumstances?

Q. I suggest to you that for children to run into difficulties within such a narrow band of time would be highly unusual, would it not?

A. Unusual in the number of infants that ran into problems at that particular time, yes.

Q. Now the other thing that is of interest to me is that a number of the children seemed to get into trouble at the same time period. For instance during March Pacsai and Cook got into trouble at 3:45 in the morning, according to the notes, at exactly the same time. If one traces through the children that we are looking at altogether there is a remarkable coincidence that the children seemed to

BB10

get into trouble at similar times. For instance Lombardo got into trouble at 3:30; Monteith at 3:30 in the morning; Fazio at 3:30 in the morning; Gardner at 3:30 in the morning; MacDonald at 3:35 in the morning. Do you find that, from your experience as a paediatric cardiologist and paediatrics generally, to be unusual that children would get into trouble at virtually exactly the same time.

A. I think anybody would, yes.

- - - - - - - - -

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Q. That's more than just coincidence, is it not, Doctor?

A. Whether it is coincidence or happenstance, it is unusual.

Q. It's highly unusual, isn't it?

A. It's unusual.

Q. And I could go on, Doctor, because Estrella and Hoos get into trouble at 2:40 in the morning, Pacsai and Cook and McKeil get into trouble at 3:45 in the morning, and I could go on. You would agree with me that the coincidence of time that these children get into trouble is unusual?

A. Yes. As I stated earlier, it's the number who got into problems at that particular time, the early morning hours.

Q. I know earlier we were talking about a band of time; now we are talking exactly the same time, according to the notes, they seem to encounter difficulties. Would you say that that is unusual?

A. Yes.

MR. OLAH: Thank you. Those are all the questions I have.

THE COMMISSIONER: Fine. Thank you.

Mr. Labow?

CC2

CROSS-EXAMINATION BY MR. LABOW:

Q. Doctor, my name is Stephen Labow and we represent the parents of Barbara Gionas. Do you still have the Gionas chart beside you?

A. Yes.

Q. Could you look at page 72 of the chart. Now, the top of page 72 there is a note apparently written by you on the 6th of March.

A. Yes.

Q. Was that your on-service note?

A. That is my first examination of the child, yes.

Q. So, you examined the child on the 6th of March and she was relatively stable?

A. The only thing I was concerned about was that her intake as compared to her output, as you will notice, was about 340 cc. and that her serum sodium was low.

Q. And what did that mean to you?

A. That the serum sodium may have been dilutional, that the baby was overhydrated and that subsequently my orders were to decrease the amount of intake.

Q. And to continue diuretics?

A. And to continue diuretics.

CC3

Q. Now the next note is the first note on the 7th, which is on page 73. You told Miss Cronk that you were called by a nurse. Do you know which nurse called you?

A. No, I can't recall.

Q. Now, you told us about your impressions at 1 o'clock and you were concerned about digoxin toxicity and two other things. I think what you said is that after you got the test results, or some of the test results back, in the late afternoon, your concern heightened and you ordered the digoxin level be done immediately?

A. Yes.

Q. Could you look at page 75. That's Nurse Patridge's note. Now, she had the care of this child on the long day shift on the 7th and about half-way down her note at the end of Nutrition, she notes that blood was taken for a digoxin level because of a query of digoxin toxicity causing vomiting. And then under Cardiac Status she notes that you were in in the afternoon when the status changed.

A. Yes.

Q. So, that would probably have been the 1 o'clock, this 1300 hour visit?

A. That's correct.

CC4

Q. Now, you will notice that after she has the results of some of the tests, or what the tests were going to be, she has down stat. ECG, chest x-ray. Those were your orders?

A. That's correct.

Q. She then notes that the child seems to have stabilized and settled again.

A. Yes.

Q. So, by the end of the 7th, by the end of that shift, the child had stabilized?

A. Well, according to the nurse's notes, yes.

Q. According to the nurse's note. If you turn to page 76, that's Mrs. Trayner's note for that night.

A. Yes.

Q. You will note that Mrs. Trayner indicates that the child had a very comfortable night, the respirations were much more regular and easy, the child didn't appear to be in any respiratory failure, her apex was regular all evening and there was no vomiting.

A. Yes.

Q. So, after stopping the digoxin and doing these tests and reducing her intake and the

CC5 other steps that you had taken, the child seemed to be doing much better on the evening of the 7th?

A. That's correct.

Q. Now, I think you indicated that, was it Dr. Soulioti who said to you that there was some kind of concern on the 8th when you weren't there?

A. Well, I heard about this when I came back on the Monday.

Q. You heard that there was a concern on the 8th?

A. Well, she was called by the nursing staff on the 8th to Baby Gionas because there was concern.

Q. Okay. Now, do you have any idea or any recollection as to whether that was during the day or in the evening that Dr. Soulioti was called?

A. No, I have no idea about that.

Q. Because Nurse Patridge's note on page 76 for the long day shift on the 8th seems to indicate that the apex was stable and regular and there was sinus rhythm all day and things didn't appear to look too bad at that time; that was during the day shift.

A. Yes.

Q. And the trouble seemed to begin

CC6

on Mrs. Trayner's shift that evening. We have heard that from Mrs. Trayner she was somewhat concerned and that Dr. Soulioti checked the child's apex early in the shift when she was on her rounds and was asked to check the apex and Dr. Soulioti, according to Nurse Trayner, indicated there was nothing to be concerned about at the time. Do you have any recollection of Dr. Soulioti saying that to you, that she checked the baby early in the shift and there didn't seem to be anything wrong?

A. No.

Q. Now, other than a recollection that there was some kind of concern on the 8th, do you have any recollection as to what the concern was?

A. No, because I wasn't in the Hospital.

Q. You don't recall Dr. Soulioti telling you what the concern was?

A. No.

Q. Now, you have indicated that two deaths in a weekend were unusual.

A. Yes.

Q. Now, you had been a resident at the Hospital for about eight months, if we begin at the end of July?

CC7

A. No, I had been a resident there for almost two years.

Q. Oh, you had been a resident the year before as well?

A. That's correct.

Q. Had you encountered that kind of situation ever before?

A. Where there were two arrests on a weekend?

Q. Yes.

A. No.

Q. Okay. Now, on Monday morning, you find out about this death and you go on your rounds, your regular rounds on Monday morning. Did you discuss the deaths over the weekend with the Ward Chief?

A. Yes, we did.

Q. And were you given any kind of explanation?

A. No.

Q. Do you recall any kind of explanation being offered to you after that time?

A. By the Ward Chief?

THE COMMISSIONER: Any particular weekend?

CC8

MR. LABOW: We are talking about the 9th or 10th of March.

THE COMMISSIONER: Yes, yes.

A. By the Ward Chief?

MR. LABOW: Q. Yes.

A. No.

Q. But you did mention that there were a number of arrests that weekend?

A. There were two.

Q. Do you recall if anyone mentioned any of the other deaths on the ward over that couple of days; there were two before the weekend?

A. Yes, I know. No, just the two were mentioned.

Q. Now, do you know Dr. Heilbut?

A. I know her but not very well.

Q. Exhibit, I think it is Exhibit 401, which is the Pediatric Service Schedule, and it indicates that you were on 4A/B for the 13th of March.

A. I may have been.

Q. Now, by that time there had been a number of deaths in March, including Kristin Inwood the early morning of the 13th.

A. I have a schedule that only starts from July -- oh, here it is.

CC9

Q. It is the very last page of Exhibit 401.

A. Yes, I was on on the 13th.

Q. Now, Kristin Inwood had died early that morning and there had been a whole series of deaths, the four before the 10th and then the Pacsai, Manojlovich and Inwood deaths on the 12th and 13th.

A. Yes.

Q. Do you recall Dr. Heilbut ever advancing as an explanation the fact that things slowed down a bit at night, an explanation for these deaths late at night?

A. No.

Q. Do you recall that ever being discussed by anyone?

A. No.

Q. Do you recall any of the doctors ever setting out as an explanation for the deaths at the time period involved that children had a tendency, or people had a tendency to slow down and die at night?

A. No.

THE COMMISSIONER: I'm sorry, what was your answer to that?

THE WITNESS: No.

CC10

MR. LABOW: Q. Did you think that that would adequately explain this kind of situation? Has that ever occurred to you?

A. That there are more baby deaths occurring at night?

Q. Because things slow down at night.

A. Slow down as far as less personnel around?

Q. No, I think it is slow down as far as your metabolism or the body or whatever.

A. No.

Q. Now, you had been at the Hospital for a while by the time you got to the cardiology floor. Had you ever heard any of the rumours that we have heard about, about the number of deaths on 4A/B?

A. No.

MR. SCOTT: What time?

MR. LABOW: I am talking about March, March of '81.

Q. You don't recall ever hearing that kind of thing floating around the Hospital?

A. Prior to my starting on the --

Q. Prior to your starting on the floor.

CC11

A. No.

Q. Now, after you started on the floor, was that ever brought to your attention that there had been clumps of deaths?

A. No.

MR. LABOW: I have no further questions.

THE COMMISSIONER: Mr. Shinehoft, are you next?

CROSS-EXAMINATION BY MR. SHINEHOFT:

Q. Doctor, my name is Jack Shinehoft and I represent the parents of Kevin Pacsai. Now, do you have his chart before you, it is Exhibit 106?

A. Yes, I think I have that.

Q. Would you turn, Doctor, to page 64 of that chart. At the top of it is what I have called a Transfer Summary.

A. Yes.

—

Q. Did you prepare that document, Doctor?

A. No.

Q. Do you know who did?

A. Most likely it would have been the physicians from Hamilton.

Q. If you will look about nine lines down you see where it starts: "On admission".

A. Yes.

Q. "On admission looked pink", is that not what it says?

A. Yes.

Q. Would that have been done by a Hamilton doctor, because I will tell you why, Doctor, I was concerned or interested in the comment that you made this morning when you said that upon the child's admission that the child was somewhat pale. It seems at variance to what is contained in this transfer summary. Do you have any explanation for that?

A. No. I don't even see a signature on this transfer summary.

Q. But you would agree that on admission it would seem to imply that it was on admission to The Hospital for Sick Children, would you not?

DD.2

A. From this note it does seem like that, yes.

Q. Do you recall specifically at this time your examination of this child on the 11th of March of 1981?

A. Yes.

Q. Is it still your opinion that the child looked pale at that time, notwithstanding what it says in the transfer summary?

A. Yes.

Q. Now, Doctor, you indicated that you first examined this child approximately 3 o'clock in the afternoon?

A. That is correct.

Q. And you examined the child on the ward?

A. That is correct.

Q. Could you just relate to me the circumstances of how it was you that was assigned the task of examining that child?

A. This baby was transferred from Hamilton to Ward 4B and I was covering 4A, but the residents on 4B were very busy with other transfers from the Intensive Care Unit and other admissions, so it was Dr. Schaffer who asked me if I would admit Kevin.

DD.3

Q. Did he discuss this child with you before asking you or after asking you to examine this child and admit the child?

A. We discussed Kevin after I had examined him.

Q. But not before?

A. Not before.

Q. He didn't give you a provisional diagnosis or anything like that, as to what the people in Hamilton thought might be wrong with the child?

A. No.

Q. So you had no idea of what the problem was with this child at the time that you initially examined the child?

A. No. The only information I got was from the two nurses who came down with him from Hamilton plus the transfer notes.

Q. Did you have some conversation with those two nurses?

A. Yes.

Q. Did they tell you what they thought was his problem in Hamilton?

A. They didn't know. They didn't know.

Q. But they did give you the

physical manifestations of this child's problem, did they not?

A. Yes, they did.

Q. And that was a rapid and a slow heartbeat?

A. Predominantly a rapid heartbeat.

Q. When you first examined the child was his IV in place?

A. Yes, it was.

Q. There has been some evidence it went interstitial and had to be restarted upon his admission to the Hospital in Toronto?

A. No. I remember quite clearly that it was in place and it was dripping from the buretrol.

Q. This was after?

A. After.

Q. Would he have gone initially to the Emergency Department and then transferred on to the ward?

A. No, he came straight to the cardiac floor.

Q. Okay. The condition of the child, upon his arrival to the Hospital, you said he was pale, but other than that was there any problems that you could diagnose or see with this child?

DD.5

A. No.

Q. You indicated that you examined him and you spoke to Dr. Schaffer and you left around 5 o'clock?

A. That is right.

Q. Did you see him after you examined him initially around 3 o'clock prior to the time that you left at 5 o'clock?

A. Only after I went over with him with Dr. Schaffer.

Q. Had his condition changed at all from the time you initially saw him until the time you looked at him or reviewed him after discussions with Dr. Schaffer?

A. No. Dr. Schaffer just corroborated my clinical impressions.

Q. Were you present with Dr. Schaffer, had a conversation with Dr. Ning about this child?

A. Who is Dr. Ning?

Q. Obviously you weren't --

THE COMMISSIONER: You may not recognize the pronunciation. It is spelled N-g.

MR. SHINEHOFT: I have got it N-i-n-g.

DD.6

THE COMMISSIONER: Some people may have been phonetical with it, but I saw certainly Ng somewhere.

MR. SHINEHOFT: I am looking at the transcript.

THE COMMISSIONER: Under any spelling you don't recognize him?

THE WITNESS: No.

THE COMMISSIONER: That is --

MR. SHINEHOFT: I think that adequately answers the question, Mr. Commissioner.

Q. Now, you understand or were you told the purpose of this child being in Toronto?

A. Just that they hadn't come up with an etiology for Kevin's fast heart rate and they wanted to do more extensive cardiovascular work-up at Sick Kids'.

Q. My understanding that there are two types of admissions basically, one that you just referred to where there was a work-up, that is to determine the problem that existed in a child or a patient and the other kind where a patient is under active treatment. Would you agree with that, first of all?

A. Yes.

Q. Would you agree that Kevin Pacsai was the former type of patient, as opposed to the latter type of patient?

A. Yes.

Q. And again, Doctor, would it be fair to say that you were very surprised when you learned of this child's death?

A. Yes.

Q. Would you consider his death very sudden and unexpected, as far as in your experience?

A. Yes.

MR. SHINEHOFT: I have no further questions, thank you.

THE COMMISSIONER: Thank you.

Mr. Tobias?

CROSS-EXAMINATION BY MR. TOBIAS:

MR. TOBIAS: Mr. Commissioner, perhaps before I begin I have been in touch with Dr. Dvorak's office and I do have his authority to place the original discharge summary from North York General Hospital in evidence.

THE COMMISSIONER: It is legible I take it?

MR. TOBIAS: Yes, it is, sir.

THE COMMISSIONER: Can we put that in as 410 then?

MR. TOBIAS: Thank you.

THE COMMISSIONER: Perhaps we will try our best to make legible copies.

--- EXHIBIT NO. 410: Original discharge summary from North York General Hospital.

MR. TOBIAS: Q. Dr. Kobayashi, my name is Warren Tobias and I act for the family of Jordan Hines.

Your observations of Jordan Hines in the Hospital, I take it, were during the day on March 6th and 7, 1981?

A. Yes, that's correct.

Q. On those occasions during the day on March 6th and 7th, 1981, your observations generally, is it fair to say, were that you saw no distress and that the baby appeared to be perfectly healthy to you?

A. That is correct.

Q. So you are aware of the fact that the baby was admitted some time very early on March 6th. It would have been shortly after midnight?

A. Yes, late Thursday.

Q. In any event, you were

DD.9

satisfied he wasn't there during the day on March 5th, the Thursday?

A. That's right.

Q. When you would have been doing your rounds. During the time that the baby was in the Hospital, which would only have been March 6th and 7th, because he died very early on the 8th, you really saw no signs of illness in this baby?

A. That's correct, apart from the pneumonia.

Q. I believe that is what you said. Now, you also indicated to Miss Cronk that at the time that you were dealing with this baby you didn't have a copy of the discharge summary from North York General?

A. That's correct.

Q. I take it however you did have some information by way of the nursing notes and the chart and Dr. Mangera's notes, as to what the observations had been in North York General?

A. Yes.

Q. You were, therefore, familiar, I take it and had some knowledge, at least on March 5th, while he was in North York General, the baby was showing heart arrhythmias and swings of tachy

and bradycardia showing some evidence of blue spells?

A. Yes, that's correct.

Q. As far as you knew on March 6th and 7th of 1981, whatever had been causing that, was under control, because you weren't seeing those symptoms on March 6th and 7th?

A. That's correct.

Q. Fine. Now, I believe you also told Miss Cronk this morning that there would have been some discussion that you took part in regarding Baby Hines shortly after Susan Nelles was charged, and you told us about a meeting with Dr. Rowe?

A. That's correct.

Q. All right. Now, perhaps if I can help you by giving you a time post, sort of to serve as a reference. Let's talk about the discharge of Susan Nelles, which would have been in the spring of 1982 when the charges against her were dismissed. There was insufficient evidence to go to trial.

After that point in time do you recall before being contacted by Commission counsel discussing the Jordan Hines case with any of the cardiologists at the Hospital?

A. No.

Q. Okay. Specifically, and please

DD.11

try if you can, to recall. Do you recall any discussions in that time frame, that is from the time Susan Nelles was discharged until you were contacted a little while ago when giving evidence here, do you recall any discussion you would have had with any of these doctors, Dr. Rowe, Dr. Freedom, Dr. Fowler, Dr. Rose, Dr. Olley or Dr. Izukawa?

A. With regards to Hines, no.

Q. You have no specific recall of any of those doctors approaching you or asking you about your observations about the child and your impressions of the child?

A. No.

Q. All right. Now, I am going to narrow it down considerably. I would like you to think back to last summer and, in particular, I would like you to think if you can of the months of May, June, July and August, those four months in 1983. Do you have any recollection of speaking to any of those doctors about your observations and your impressions with respect to Baby Hines?

A. No.

THE COMMISSIONER: If you are just going back at this and getting closer and closer and closer, do you have a specific date

DD.12

or a specific doctor in mind?

MR. TOBIAS: Well I think I am as close now as I am ever going to get.

Q. Do you recall having ever gone to a meeting with those six doctors and reviewing the Hines' chart and discussing it at that time?

A. No.

Q. Fine. You also indicated that as of March 7th, 1981, you had certain test results available with respect to Hines and I believe your evidence this morning was that you saw no evidence of bacteria, that no viral growth and the blood culture was negative?

A. That's correct.

Q. Do I take it that those findings, and of themselves,would not conclusively rule out at that time the possibility of sepsis or infection?

A. That's correct. We usually wait 48 hours before we establish a positive culture, be it in the spinal fluid or in the blood. At that point the cultures had been taken on the 6th, so I had preliminary culture reports 24 hours after which were negative, so they were not conclusive.

Q. If the cultures were negative, having waited the whole 48 hours, would that, in your

DD.13

mind, conclusively rule out any possibility of infections?

A. In those particular specimens that were tested for, yes.

Q. You also gave evidence that when the Code 25 was called, with respect to Hines, and you attended, that Susan Nelles was already there at his bedside. Do you recall who else was there at that time?

A. Nobody.

Q. You would have been the second person to respond?

THE COMMISSIONER: No, the first. It is quite possible, because Susan Nelles might have been there at the time. He might have been the first to respond.

MR. TOBIAS: That is entirely possible.

Q. In any event, your recollection for the time you got there she was the only person present?

A. That's correct.

Q. You indicated also in your evidence this morning that on the basis of your experience, and I understand at the time it was fairly limited, the Hines' resuscitation effort was

DD.14

a fairly lengthy one?

A. Yes.

Q. Was that because the child was responding to the resuscitation effort?

A. Two reasons: one, because the child was healthy, was not ill, and also was responding to the resuscitative measures.

M/hr

Q. For both of those reasons the resuscitation would carry on somewhat longer than normally?

A. Yes.

Q. Now there has been some modicum, Dr Kobayashi, of confusion regarding the times. I would just like to ask you, if you can - Mr. Registrar, could the Doctor have Exhibit 103, which is the Hines chart. Do you have that, sir.

THE COMMISSIONER: Yes.

Q. Unfortunately I have to show you my copy because I believe in the copy that is in the chart there is a page missing. This is Exhibit 103 which is the Zebra Package for Jordan Hines.

THE COMMISSIONER: 103, I'm sorry, 103A as I have it - I think it is 103B is it not?

MR. TOBIAS: Yes, you are quite right, Mr. Commissioner. 103A was the final autopsy report.

Q. 103B would be the Zebra Pack there it is right there. There are, starting on the third page, there is a list of drugs and a list of times, and previous witnesses have identified this as the sheet of drugs given during resuscitation by the nurse who would have been present and recording the drugs as administered. It would appear that the note

says, on page 2 of that document, that cardiac massage stopped at 6:43 in the morning. Then on the page following it is a note by Dr. Su indicating that the patient expired at 6:40 a.m. Now, I realize this was a long time ago and a great deal has transpired since then. Does that document help you at all in terms of placing the time when the resuscitation effort would have seized.

A. The arrest was called at approximately 4:30 a.m.

Q. Yes.

A. And it went on for to two and a half hours, so the times that you state in your Zebra probably would be correct.

Q. They would be consistent with your recollection of what time it was called and how long it went on for?

A. Yes.

Q. You also indicated, I believe this morning, that the possible involvement of digoxin in the Hines death is something that did occur to you, particularly after Pacasi and again after Susan Nelles' arrest. And your evidence was I believe that at that time it was not something that you specifically raised with any of the staff cardiologist. Is there

a specific reason why you would have not raised that with the staff cardiologists?

A. At which point in time?

Q. Well let's go back to the very first time that the connection occurred to you, which I believe you said it was after Pacsai. Do you recall thinking about the connection then?

A. Yes. As was brought out here that Dr. - one of the cardiologist implemented that one of the biochemist come up and check the vials. I felt that I didn't have to speak to Dr. Fowler specifically to suggest that maybe digoxin may have had some implication in these deaths, because he may have been the cardiologist who was initiating these tests into the biochemical --

Q. But you were not fixed at that time with any specific knowledge that the request to test these vials were related to Hines in particular, were you?

A. No.

Q. And you would have been greatly concerned I take it even with the possibility of an accidental administration to Hines, because he wasn't prescribed digoxin at all?

A. That's correct.

Q. So that would have heightened your concern?

A. That's correct.

Q. Is there any other reason you can give me why you would have not specifically raised that, once it had dawned on you, with any of the staff cardiologists?

A. No, I can't give you an explanation.

Q. Okay, that's fair. Now you also indicated this morning that there was a meeting with Dr. Rowe, some of the nurses, and the other Fellows, shortly after the arrest of Susan Nelles. I believe your evidence was ohe week later and that at that time the possible connection between the Hines death and the digoxin involvement was raised. Now my first question is this, was that meeting a regular meeting which took place all of the time on the Ward?

A. No, no, this was sort of an off the cuff meeting because there was a lot of stress among the nurses. I think Dr. Rowe wanted to inform the residents what was going on and the Fellows and just let everybody know on the Ward what was happening.

Q. Now, I take it that you were present at that meeting ?

A. That is correct.

Q. And you used the phrase this was an "Off the cuff meeting", it was a separate or special meeting called to deal with a specific issue?

A. Yes.

Q. Do you know who it was that called that meeting; was it Dr. Rowe who initiated it?

A. It may have been Dr. Rowe, it may have been the Head Nurse, I forget the name, on 4A.

Q. Mrs. Radojewsky?

A. Yes.

Q. You can't really help us as to which one did call the meeting. Can you tell me who informed you of the meeting?

A. I was informed by the nursing staff.

Q. Now I take it that from Dr. Rowe's presence at the meeting that you would have assumed that it was a fairly important meeting?

A. Yes.

Q. He was fairly senior in the Hospital?

A. Yes.

Q. And was calling, I shouldn't say calling, but was attending in a meeting that had been called specifically to deal with the events of that March?

A. Correct.

MR. TOBIAS: Perhaps Mr. Commissioner we may take a break at this time.

THE COMMISSIONER: Yes. I am getting a little worried now. How long do you think you will be?

MR. TOBIAS: Well depending on Mr. Scott's reaction to the rest of my cross-examination either ten minutes or twenty minutes.

MR. SCOTT: I had almost fallen off.

THE COMMISSIONER: I tell you it is a matter of some concern, you and Mr. Scott can have your tiff later. I want to sit late so we can get rid of, I'm using these words and I don't mean that, but we have to finish Dr. Bunt because really it is only one matter that he is discussing. But obviously we are going to be much longer than -- I am worried about sending everybody away for twenty minutes, sometimes that means longer than that. If you can do it in ten minutes, if I scowl at Mr. Scott every

time he --

MR. TOBIAS: I think I probably can.

MR. SCOTT: Well I may be ten or fifteen minutes, and may what we should do is take Dr. Bunt out of order.

THE COMMISSIONER: I am just as much concerned that Dr.Kobayashi, I want to make sure he finishes today. I wanted to get through so we can talk about Phase II tomorrow, that is my object. It does mean sitting late if we have to. I think we will continue with this one. We will take, I'm going to make it half past three, I don't want you and Dr. Kobayashiback here and if nobody else is here except the three of us, and the reporter we will carry on.

MR. TOBIAS: Thank you sir.

--- Short Recess.

--- Upon resuming

THE COMMISSIONER: Yes, Mr. Tobias.

MR. TOBIAS: Thank you, Mr. Commissioner.

Q. Just before the break, Dr. Kobayashi you had indicated to me that you couldn't be sure who called the meeting that I had been referring to, you remembered that you were there, and you couldn't recall specifically who advised you to be at the meeting. Was this a meeting wherein it was the

Hines case only that was discussed, or was there a general discussion dealing with other baby deaths as well?

A. It was general discussion dealing with all of the babies.

Q. And your recollection in giving your evidence in chief was that at that time the question of some possible digoxin involvement in the Hines case was raised. Do you recall who specifically brought that to the meeting's attention?

A. No, I can't recall that.

Q. Do you have a clear and specific recollection however that it was indeed raised?

A. It was raised because that was after Susan Nelles had been arrested.

Q. Do you think it was, if you can recall, a nurse, a doctor, a fellow who would have brought that to the meeting's attention, do you have a recollection on that?

A. It was everybody.

Q. What was Dr. Rowe's reaction, do you recall?

A. I can't recall.

Q. And we know as a result of that meeting and the fact that the possibility was

voiced and raised, do you recall if anything happened as a result, was anything done about it, were there any further meetings for instance?

A. Not with Dr. Rowe, but just with the residents, Dr. Schaffer and the nurses.

Q. And were those subsequent meetings with Dr. Schaffer, the residents and the nurses also dealing generally with the question of the baby deaths?

A. Moreso just with the supportive care between all of us.

Q. So that those meeting didn't specifically deal with any link or connection between any particular death and digoxin?

A. That's correct.

Q. Do you recall any meetings other than those in which the connection between the baby deaths particularly and digoxin was raised or further explored?

A. No.

Q. Were you asked to give your views on that subject to any of the other staff cardiologists, or to anyone in the administration in the Hospital?

A. No.

Q. So as far as you know that particular topic was not taken any further in terms of involvement of yourself?

A. That's correct.

Q. Now during the resuscitation effort of Hines itself, and I understand that you were present throughout except for the time you went out to phone either Dr. Rose or the Hines family ?

A. Both, yes.

Q. Now we have heard a lot of evidence that you were somewhat successful in getting a heart beat back?

A. Yes.

Q. Can I take it throughout the lions share of the resuscitation effort, over the two and a half hours, the heart rate was not back in normal rhythm?

A. That's correct.

Q. There was some impairment in the heartbeat throughout?

A. That's correct.

Q. Now, what would that do, Doctor, to the circulatory system; would that impair the effectiveness of the circulatory system?

A. Yes.

Q. And in fact if you have the chart in front of you perhaps you can look at page 70 of the chart actually it starts on page 69. I believe that it is the arrest notes of Dr. Costigan and I won't ask you specifically to look at any specific entries but I notice several entries throughout the two and a half pages of that note dealing with the lack of response, and the fact that they couldn't get a blood pressure on the child. That I take it is another indication why the blood pressure and circulatory system was impaired?

A. That's correct.

Q. Does reading that note help you at all in helping you to categorize the degree of circulatory impairment?

A. It is profound the fact that they do not record the blood pressure and some of the other biochemical tests would support that as well.

Q. When you say profound, I take it that the degree of impairment was quite high?

A. Yes.

Q . The circulatory system was almost not working at all?

A. Yes.

Q. Now as well on page 70 of the note sixth lines from the bottom, you see the notation, "Never became readable", and then there is an arrow and the arrow says, "Pacemaker accidentally knock out." ". Does that not indicate that at some point a pacemaker was applied during that resuscitation effort?

A. To my knowledge a pacemaker was never inserted.

Q. But in fairness my question is on the note, on the face of the note itself the note of Dr. Costigan, would you not agree with me that it does appear from that note that a pacemaker must have been applied because if it had not been applied how could it accidentally have been knocked out?

A. That's correct, yes.

Q. Does that help you at all in jarring your memory or recollection?

A. If a pacemaker was inserted?

Q. Yes.

A. Well, yes I mean, if it is written down in print then most likely a pacemaker was inserted.

Q. Perhaps this is a fair way of putting it Doctor. Your evidence really is that you have no specific recollection of the pacemaker being applied, that doesn't necessarily mean that it wasn't, what it means is that you can't remember it being applied?

A. That's correct.

Q. Now, you also indicated earlier in the day that it was really not until you began to review the chart in preparing for the evidence that you would give here that you had heard anything about, or even considered Sudden Infant Death Syndrome as a possible explanation?

A. Yes.

Q. Now, I take it from that obviously that it did not occur to you yourself, that was not a provisional diagnosis that you have thought of?

A. That's correct.

Q. Why is that ? Is there any particular reason why that you can think of?

A. One is that the child was 20 days older at the time. He is a bit young for Sudden Infant Death Syndrome, and it just didn't cross my mind at that particular time.

TF/BM/LN
1

Q. Okay. Now, was there any other reason that you want to give us why perhaps it didn't seem likely to you immediately because you said one is that he was only 20 days old. I took from that that there might have been something else.

A. Well, no, there are no other reasons that I can give you.

Q. All right.

A. That I can think of right now why I didn't think of since.

Q. Let's attempt to characterize this fairly. What you are saying is that in a 20 day old infant that's a little bit young for SIDS. That certainly doesn't mean that it wasn't SIDS, it is just one factor that you consider in your opinion of it being somewhat less likely. Is that a fair way to summarize it?

A. Yes.

Q. All right. Now what about the presence of an apnea monitor monitor and cardiac monitor, does that have any significance in your view with respect to the likelihood of SIDS?

A. No.

Q. Okay.

THE COMMISSIONER: Did you say it

FF2

doesn't have any effect?

THE WITNESS: No, there is really no correlation.

Q. Well, let's put it directly. Is it your understanding that SIDS can set in, a SIDS episode can set in and the child can succumb to SIDS even if he or she is on an apnea and cardiac monitor?

A. Yes.

Q. So, that certainly is not something that definitively says that it wasn't SIDS. Let me ask you this. Is it not less likely for the child to succumb to SIDS if they are on a monitor and is that not the reason why you put them on the monitor to begin with?

A. Sure , we put Jordan on both of those monitors because of the apneas and the bradycardias but just because he's on the monitors does not decrease the likelihood of him having ---

THE COMMISSIONER: I'm sorry, I didn't hear that.

THE WITNESS: Just because he is on the monitors doesn't lessen the likelihood of him having SIDS.

Q. No, what I am really asking is this. The fact that he is on a monitor, which I

FF3

understands acts sort of as an early warning system does not decrease the likelihood of him having SIDS. Would it not decrease the likelihood of him succumbing to it, in other words, not being resuscitated?

A. Yes.

Q. Okay, fine. Now, you also told Ms Chown this morning that under all the circumstances having read the pathology report and having examined it and directed your mind to it, you would have to go along with Dr. Becker's findings. Can you tell me why?

A. Well Dr. Becker is a senior neuro pathologist at the Hospital for Sick Kids and he is well versed in the neuro pathology of SIDS cases.

Q. Yes.

A. And reading his report and his conclusions I wouldn't contra-indicate his findings.

Q. All right. Now, we have had filed as an Exhibit before this Commission, as Exhibit 283, a report prepared by Dr. deSa, who is the Pathologist in Chief of the Children's Hospital in Winnipeg. Have you had an opportunity before today to see that report or to read it?

A. No.

Q. All right. In fairness and in

FF4

light of the fact that you have said no, let me just read you one small passage from it. This more or less summarizes Dr. deSa's opinion. I am reading, sir, from page 11 of the report under the heading Cases With Discrepancy Between Clinical Features and Autopsy Findings.

Dr. deSa in effect says that he feels that in the Hines case:

"...the finding at autopsy did not explain completely the death of the infant nor the accute mode of death"

MR. SCOTT: Where are reading from?

MR. TOBIAS: Page 11 Mr. Scott, the paragraph immediately under the heading.

MR. SCOTT: Thank you.

MR. TOBIAS: Q.

"I felt that the finding at autopsy did not explain completely the death of the infant nor the accute mode of death"

Let me ask you, does that surprise you in any way, that finding?

A. No.

Q. All right. Am I correct that it doesn't surprise you because it is not that uncommon

FF5

for two pathologists to disagree?

A. That's correct.

Q. And you wouldn't go so far as to say that Dr. Becker's report is absolutely definitive and beyond question and can't be challenged or disagreed with by another pathologist, would you?

A. That's correct.

Q. All right. Now, are you aware, and I realize Doctor in fairness that you are hardly an expert on SIDS, nor have you devoted half of your professional lifetime to study ing the subject, but do I take it that you have some knowledge with the methodology in which Dr. Becker would employ to come to the conclusions that he did in his report, some general knowledge of the methodology employed?

A. Yes.

Q. All right. You are aware of the fact then that autopsy, particularly with respect to his findings of brainstem scarring slides would be taken, meaning that the brain would be dissected, the tissue would be fixed, put on slides and those slides would be examined?

A. Yes.

Q. And you are also familiar I take it with the fact that brainstem scarring is not

something that you would expect to see at gross autopsy?

A. That's correct.

Q. It involves microscopic studies?

A. That's correct.

Q. Do you also agree with me Doctor, you would certainly know I would hope what brainstem scarring is?

A. Yes.

Q. Now, is that not a fairly subtle change?

A. Subtle in what respect?

Q. Well, subtle in that if you have two slides in front of you, one in which there is no brainstem scarring and one in which there was some brainstem scarring, it's not the type of thing that jumps out at you from the slide, there is an element of interpretation there because the change is a very suble change. Do you agree with that?

A. No, depending on the amount of gliosis that occurs or scarring it can be quite significant.

Q. All right, I recognize that. Dr. Becker in giving evidence before this Commission, and this Mr. Commissioner is at Volume 39, page 7763

FF7

answered some questions for the Counsel for RNAO, Miss Symes, and he was asked specifically, and I am dealing now sir with line 8, whether there is some gradation in the amount of scarring, whether it is a quantative thing and he said:

"There is a gradation but more important is the site of the scar."

He then goes on sir at later lines to talk generally about gradation and the site of the scar and he refers over on page 7764 to the amount of scarring that could or could not be present. So it would appear in any event from Dr. Becker's evidence that there is some degree of quantification of the amount of scarring.

Now that is really what I was getting at before. Is it not something that is subject in some sense to interpretation of the slide?

A. Yes.

Q. And you would certainly have to look at the slide in order to give an opinion?

A. That's correct.

Q. And it is certainly not beyond the realm of possibility that one pathologist could look at a slide and say, yes, I see a change, I see brainstem scarring and another pathologist could look

FF8

at that same slide and say, well, I don't see it, in my view there is not significant brainstem scarring. Do you agree with that?

A. I agree with that, yes.

Q. Okay, fine. Now, do you also agree with me that SIDS is a syndrome, is a condition that is not associated with any specific morphological abnormalities?

A. Morphological in the brain, or morphological... ?

Q. Morphological in the more general sense.

A. I don't understand the question.

Q. In terms of changes to various organs in the body?

A. Well, you can --

Q. First of all in fairness do you understand the question?

MS. CRONK: Well, before the Doctor has to probe his analysis any further to see if he understands it, may I suggest simply this. The Doctor is not put forward as an expert pathologist. I have not heard him voluntarily indicate that he has any degree of expertise in the pathological indicators of SIDS and surely this

FF 9

question can properly be put, if indeed it has been to a number of experts who are in a position to reply on the matters.

THE COMMISSIONER: It seems to me that we have gone into everybody who maintains they have any knowledge of SIDS and was cross-examined on the subject, we have all kinds of of articles and I don't think for a moment Dr. Kobayashi that you don't know more about the subject that I do, but do you pose as an expert on SIDS?

THE WITNESS: No.

THE COMMISSIONER: Pose is not a good word, are you an expert in SIDS?

THE WITNESS: No, I'm not an expert on SIDS.

THE COMMISSIONER: Couldn't we leave it at that?

MR. TOBIAS: Yes we can, sir. I have only one last question.

Q. Would you agree with me, Doctor on the basis of your state of knowledge, and I recognize your not an expert, that SIDS in fact is a disgnosis of exclusion?

MS. CRONK: Well, again, sir, same objection.

FF10

THE COMMISSIONER: We've had different schools of thought on that too.

MR. TOBIAS: Yes, all right.

THE COMMISSIONER: Some say yes, some say no.

MR. TOBIAS: I have no further questions. Thank you, Mr. Kobayashi.

THE COMMISSIONER: Thank you. What has happened to Mr. Shanahan, he has lost interest in this proceeding?

MR. CHECCHETTO: Mr. Shanahan was outside.

THE COMMISSIONER: Oh, all right. Your're wanted up front, Mr. Shanahan.

MR. SHANAHAN: I have no questions of this witness.

THE COMMISSIONER: That's good. Well, now Miss Cronk disagrees with me but my thoughts are in the past and it takes us back many many months and believe it or not we did call doctors at some point in this, that when they were your clients I allowed both you and the Hospital to reexamine.

MS. CRONK: We are not taking objection, sir.

THE COMMISSIONER: Yes, all right.

FF11

MS. CHOWN: That is my memory also, sir.

THE COMMISSIONER: Now, who goes first?

MR. SCOTT: You go ahead.

MS. CHOWN: I have no questions.

THE COMMISSIONER: She has none. If you do a good job I think is what she is saying.

MR. SCOTT: She is watching me carefully.

RE-EXAMINATION BY MR. SCOTT:

Q. Doctor, I wasn't here to hear your evidence this morning, but from what I have heard this afternoon and from what I have heard about this morning I would recognize that some of the lawyers in cross-examining you asked you about patterns that you observed after you came on the cardiology ward, which I think was on March 5th, was it?

A. That's correct.

Q. And that was your first time on a cardiology ward?

A. Yes, it was.

Q. And you told us earlier that the first patient who died with whose care you were associated with Baby Hines?

A. That's correct.

Q. And now I want to talk about this word "patterns" that these other Counsel have

FF12

used. Would you agree with me that in this context you would see a pattern if you saw a couple, if you saw two or more separate events that had a common thread or threads. Is that what you mean by pattern?

A. Yes.

Q. All right. Now, I take it when Baby Hines died you have told us that you judged that death to be unexpected insofar as you could ascertain?

A. Yes.

Q. I take it that after the death of Baby Hines, that is, at that point, you weren't able to ascertain any pattern?

A. No, it was one baby who died, so there is no pattern.

Q. Exactly. So, you can't have a pattern, can you?

A. No.

Q. Now, the next baby that you were involved with was which one?

A. Well, Baby Gionas.

Q. All right. And I think you have told us that that baby died, as you judged, unexpectedly or suddenly?

A. Well, I don't know because I was not on that particular day that that baby ran into problems.

Q. Well, after Baby Gionas died did you ascertain any pattern?

A. Pattern in relation to Jordan Hines, yes, in the fact that it was sudden, unexpected and the fact that they both ran into clinical problems in the early hours of the morning.

EF13

Q. All right. So, in terms of your pattern after Baby Gionas you have two babies that you know about, right?

A. Yes.

Q. Baby Gionas and Baby Hines?

A. Yes.

Q. And you observed that you believed both of them to have died unexpectedly?

A. Yes.

Q. And in the middle of the night?

A. That's correct.

Q. Now, the next baby is Pacsai, isn't it?

A. That's correct.

Q. Yes. And while you were not there at the time of death, you admitted that child and became aware of his death afterwards?

A. The following day.

Q. Yes.

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THE COMMISSIONER: I think you are probably right, the next baby of which he was aware was Pacsai, but Manojlovich was --

MR. SCOTT: Yes.

Q. I think you said this morning you weren't aware of Manojlovich's death?

A. No, I wasn't.

Q. So the next baby of which you were aware was Pacsai?

A. Correct.

Q. Did you observe that it appeared to die unexpectedly, as far as you could judge?

A. Well, from the time I left the baby, after I admitted the baby clinically, it was unexpected, yes.

Q. So, at this point, you had three deaths of which you are aware?

A. Yes.

Q. What were the threads, if any, which connected them, apart from the fact that you judged each of them to be unexpected or sudden?

A. That they all died or deteriorated in the wee hours of the morning.

Q. There is a little problem with that, isn't there, because Pacsai, in fact, died at

GG2

ten o'clock in the morning?

A. No, but he ran into problems.

Q. Yes. Is it the running into problems that concerns you or the time of death for which you find the pattern?

A. It is the running into problems, the change in the clinical status.

Q. I see. I take it the next significant event was when the biochemist came on the ward to check the vials?

A. Yes.

Q. I think you told the Commission that he told you why he was checking the vials?

A. That is correct.

Q. And what did he tell you?

A. He wanted to know the concentration in each vial of digoxin and whether the vials of digoxin were outdated.

Q. I take it that that enquiry would have, might have founded a conclusion that the digoxin was either too powerful or not powerful enough?

A. That is correct.

Q. Yes. So that his enquiry might have led to either one of those two conclusions?

A. Yes.

GG3

THE COMMISSIONER: What happens -- you don't need to answer this question. What happens if they are outdated? I take it you mean they have been on the shelf too long?

THE WITNESS: That is right.

THE COMMISSIONER: Would they get less concentration or greater concentration or do you have any thoughts on that?

THE WITNESS: They would get less concentration.

MR. SCOTT: Q. So they become weaker?

A. Yes.

Q. Less useful for their purpose?

A. Yes.

Q. Now, that was, I take it, an unusual occurrence on the ward, the appearance of the biochemist to check the vials?

A. It is unusual, yes, for my time on the cardiac ward. It is unusual, yes.

Q. So what you had was three deaths of which you were aware exhibiting the pattern which you described and this unusual occurrence on or about March 18th?

A. Yes.

Q. Now, I take it that that occur-

GG4

rence -- or let me put it this way: Could that occurrence have led you, acting rationally, to conclude anything about how the three babies died?

A. It is a difficult question because Jordan Hines wasn't on digoxin, so it is hard to put a link together.

Q. The first thing you say is that you couldn't have made any link with Jordan Hines by virtue of the fact that the biochemist did appear on the ward, could you?

A. In Jordan Hines' case, no.

Q. Are you able to answer?

A. In Jordan Hines' case, no.

Q. With respect to the other two babies about whom you observed this pattern of sudden death and dying in the early morning or having their arrest or difficulty in the early morning, would the visit of the biochemist have led to any rational conclusion about the manner of their deaths?

A. Not immediately, no.

Q. I am talking about at that time, on the 18th or the 19th. Would there have been any rational connection between the visit of the biochemist and the mode of death of these two babies?

A. Not at that particular time, no.

GG5

Q. All right. It isn't until after Cook dies that you begin to make the connection?

A. That is correct.

Q. You hear about Cook on the Monday?

A. Yes.

Q. And that was after the police are in the Hospital?

A. Yes.

Q. So, I suggest to you, doctor, that whatever the pattern you saw, you saw nothing which would rationally lead you to conclude there was any foul play?

A. That is correct.

Q. Yes. You saw nothing that would rationally lead you to conclude that there was any drug administration error?

A. That is correct.

Q. What you did see was the pattern you have described and a visit from a biochemist, which might have suggested either that the drug, digoxin, was too strong or too weak?

A. Yes.

Q. Now, one other matter. You were asked about giving consults to cardiologists in connection with Baby Hines and I take it that Dr.

GG6

Costigan was in charge of the arrest with respect to Baby Hines?

A. Yes, he was.

Q. I take it you were present when he arrived?

A. Yes, I was.

Q. I take it that, in the course of your duties, you would have told Dr. Costigan everything relevant that you thought he should know about the baby when he began the arrest work?

A. That is correct.

Q. Yes, holding nothing back?

A. Holding nothing back, sure.

MR. SCOTT: Those are all the questions I have. Thank you.

THE COMMISSIONER: Thank you, Mr. Scott.

MS. CRONK: Thank you, sir.

THE COMMISSIONER: I'm sorry, I think Miss Chown.

MS. CHOWN: I kept a close watch on Mr. Scott.

THE COMMISSIONER: It was a satisfactory performance?

MS. CHOWN: Very satisfactory.

REDIRECT EXAMINATION BY MS. CRONK:

Q. Dr. Kobayashi, you will be

GG7

relieved to know I have just a few questions. I have listened to your discussion with Mr. Scott very attentively and I am left with some degree of confusion about some of your evidence here today.

Mr. Scott suggested to you, amongst other matters, that you did not make a connection between the visit of the biochemist to the ward and the taking by the biochemist of the digoxin vials for testing with the deaths that you knew had taken place; that there was no connection you could rationally make then until after the death of Justin Cook. You recall the discussion you just had with him?

A. Yes.

Q. I suggest to you that your evidence here today to various counsel and to me during your examination in chief is that, when you saw the biochemist taking a bottle of the elixir digoxin from the ward to be tested and you saw that, you have told us that it crossed your mind that there might be a connection between digoxin and the deaths of the three children that you were most familiar with at that time, Jordan Hines, Barbara Gionas and Kevin Pacsai? Was that not your evidence today?

A. Yes. I said that earlier, yes.

Q. You said it several times today,

GG8

have you not?

A. Yes.

Q. To me and others?

A. Yes.

Q. And, indeed, did you not go one step further when asked the question - you have told us that, when that thought crossed your mind, the possibility that Jordan Hines had accidentally received digoxin with something, that also crossed your mind? That was your evidence here today, was it not?

A. Yes.

Q. And that happened when you saw the biochemist on the ward removing the bottle of elixir for testing?

A. Or sometime thereafter, yes.

Q. The point is, doctor, and I think you have been very clear and consistent today, you told us it did not cross your mind then, indeed until much later. The suggestion of foul play with respect to any of those deaths did not cross your mind but, nonetheless, the possibility of a connection between the drug digoxin and the deaths of those three children did? Is that not a fair suggestion on the basis of your evidence here today?

GG9

A. I would say, yes.

Q. Doctor, you seem to be hesitating. Is that not, in fact, precisely what you have testified here today?

A. Yes.

Q. All right. Doctor, you also told a number of other counsel, although you were not physically on duty nor were you physically on call when a number of other deaths took place, you were aware that a number of deaths had taken place after your introduction to the cardiac wards; isn't that so?

A. No, I wasn't.

Q. You told me, for example, did you not, that you knew that David Leith had died on the cardiac ward?

A. That is just when a new resident changeover was happening.

Q. And you were told about it?

A. Yes.

Q. You knew about it?

A. Yes.

Q. And you certainly knew about Jordan Hines, because you looked after the child, you were called in and present during his arrest and resuscitation? There is no doubt about that?

GG10

A. Yes.

Q. You certainly knew about Barbara Gionas? You had seen the patient and you were informed by, you thought, Dr. Soulioti on the Monday morning that she died?

A. Yes.

Q. You certainly knew about Kevin Pacsai and you admitted him and were told of his death?

A. Yes.

Q. All right. You told us that there were four residents during that month on the ward, and I take it they weren't strangers to you? You talked amongst your colleagues and tried to learn from each other and shared information?

A. That is correct.

Q. And you did that on a frequent basis? That wasn't an abnormal occurrence?

A. Yes.

Q. And, indeed, you described a number of conversations you had with Dr. Soulioti when you talked about the fact that some of these patients had died and whether she could advance any explanation or whether you could. You told us about that. Fair?

A. Fair.

GG11

Q. And accurate?

A. Yes.

Q. I am suggesting to you simply this: That although you may not have been personally in attendance nor personally involved in the care of the children, regrettably, you knew by the latter part of March - and let's talk about on or about March 18th - there had been a series of deaths on the cardiac wards?

A. Yes.

Q. You knew that, did you not?

A. Yes.

Q. You regarded that as unusual, did you not?

A. Yes.

Q. You also regarded, you told a number of counsel, the timing of those deaths as being unusual?

A. Yes.

Q. And to the extent that those deaths took place at night in the early hours of the morning and were happening on the cardiac wards, you regarded those features of those deaths as being unusual?

A. That's correct.

GG12

Q. And to that extent, that was a pattern or those were features that you noted, isn't that so?

A. Yes.

MS. CRONK: Thank you very much, doctor. I have no further questions. Thank you, doctor, you have been of assistance.

THE COMMISSIONER: Thank you for being here, doctor.

THE WITNESS: You are welcome.

THE COMMISSIONER: Now, Mr. Hunt, what is your position?

MR. HUNT: I would like to --

MS. CRONK: Could the doctor step down? Thank you very much for your assistance.

THE COMMISSIONER: Not only thank you but, also, to bid you God speed.

THE WITNESS: I drank all your water!

THE COMMISSIONER: Have you got a witness that is prepared to share the doctor's water?

MR. HUNT: I don't know about that.

---witness withdraws.

MR. HUNT: Dr. Bunt, please.

MR. SCOTT: Before Dr. Bunt is called, I take it he is being called as a result of his

GG13

desire to reply --

THE COMMISSIONER: Yes, that is correct.

MR. SCOTT: -- to the question given yesterday. I take it we are not going to get into Phase II questions.

THE COMMISSIONER: We are not.

MR. SCOTT: Because I think Mr. Hunt is going to try to do that. I have heard what he thinks to ask.

THE COMMISSIONER: I will listen for your help if he does get into it. I would hope it is the purpose of Dr. Bunt's evidence at this point to deal with the evidence of Mrs. Hines yesterday.

MR. HUNT: No question about that.

THE COMMISSIONER: All right. Thank you.

MR. HUNT: I'm sorry, Mrs. Dawson.

THE COMMISSIONER: Mrs. Dawson, I beg your pardon. How about the Provincial Court? Have we got Mr. Shanahan here? Yes, we have. Yes. The Provincial Court doesn't work at this hour!

MR. SHANAHAN: The Crown Attorney's office doesn't!

GG14

DONALD GEORGE BUNT, Sworn

DIRECT EXAMINATION BY MR. HUNT:

Q. Dr. Bunt, I understand that you graduated with your medical degree from the University of Toronto in 1951.

A. Yes.

Q. And you interned for one year at the Toronto General Hospital.

A. Yes.

Q. And then, in 1952, you commenced general practice in Occupational Medicine here in Toronto.

A. Yes.

Q. And for thirty odd years you have been so practicing in this City?

A. Yes.

Q. Further, in 1962, you were appointed a Coroner for the Province of Ontario.

A. Yes.

Q. And since that time, in addition to working full-time at your practice in Occupational Medicine, you have carried out the duties of a Coroner from time to time when called upon?

A. Yes.

Q. I understand that, as a Coroner,

GG15

since 1962, you have to date investigated approximately 8,400 plus deaths?

A. That's correct.

Q. Can you indicate over that period of time how many inquests you, yourself, would have conducted as a Coroner?

A. It would be an estimate, but I would say somewhere between 100 and 200.

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Q. Now we are aware that you became involved in an investigation into the death of Baby Amber Dawson in late July of 1980?

A. Yes.

Q. You understand that you are here today to tell us about your investigation about Amber Dawson's death because of evidence which Mrs. Dawson gave to the Commission yesterday which raised concerns about the thoroughness of your investigation?

A. Yes.

Q. And you are aware as well that Mrs. Dawson indicated to the Commission yesterday that having met with you on the very day of Amber Dawson's death, which was July the 28th of 1980, that she according to her recollection raised the concern with you in a very dramatic way of digoxin overdose being responsible for her baby's death?

A. That is not my recollection.

Q. I appreciate that and we are going to get to it, but you understand this is the background ...

A. Yes.

Q. ... that has brought you here today to tell us about your investigation?

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A. Yes.

Q. You have read her evidence completely from yesterday?

A. Yes, I have.

Q. And of course, sir, are aware the concern is this, that is digoxin overdose was raised at the end of July of 1980, that someone charged with the responsibility of investigating that particular death and it was ignored, or not followed through, then given what occurred between August of 1980 and March of 1981 then we have a very serious situation?

A. Yes, I understand that.

Q. And I know, sir, that the suggestion of Mrs. Dawson yesterday that this matter was raised with you in a dramatic fashion, as she indicated that it was, came as a considerable surprise to you and we will deal with your recollection of those events momentarily. Could you tell the Commissioner, sir, when and how you first became aware of the death of Amber Dawson?

A. I will refer to notes that I made at that time. The case was referred to me on the 28th of July of 1980 by the Clerk on duty at the Coroner's Office and I was informed that --

Q. What time was that, do you know?

A. 1 p.m., 1300 hours. I was informed that the Clerk had received a request from someone in the Chief Coroner's Office, and I believe it was Dr. Bennett, that the case be referred to me.

Q. Now, do most requests for an investigation in your experience come from the Chief Coroner's Office, or do they come through the Clerk's Office?

A. They come for the most part through the Clerk's Office.

Q. So at the outset was there anything unusual about the manner in which this request came to you that you were aware of and mindful of at that point?

A. Yes. It had come, although through the Clerk, from a senior member of the Coroner's Office. I understood that I had been asked specifically to accept the case and that put a serious complexion on it, somewhat more serious than I would possibly expect initially with an ordinary case that would come through the Coroner's Office from a Clerk.

Q. Now receiving this case at approximately 1 o'clock on July the 28th, what was

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the first thing you did?

A. I believe at that time my notes say that I contacted the Hospital. I understood that Amber Dawson had died early in the morning, and I believe I contacted the Hospital to determine if Amber was still at the Hospital and indeed she was.

Q. What time did you contact the Hospital?

A. 1:20, 1320 hours.

Q. Did you speak to Dr. Bennett at the Chief Coroner's Office at all that day?

A. My notes show that I spoke to Dr. Bennett at 1440 hours and at 1505 hours.

Q. So for the rest of us, that would be to me at least 2:40 --

A. 2:40 and 3:05.

Q. What was the purpose of consulting with Dr. Bennett at that time?

A. To determine what the concerns were surrounding the investigation that he expected me to carry out.

Q. And what was your understanding then of any special concerns that were raised as of that afternoon?

A. My understanding was that

HH.5

Amber had died early in the morning, and that the mother, Mrs. Dawson, was concerned about the cause of death and that there was a concern on her part as well that the autopsy might be done at the Sick Children's Hospital.

Q. And is it your experience that that is how most cases come to you by reference through a relative, or was this somewhat unusual?

A. This is unusual. If we take all the cases, yes, I would say it is not common.

Q. Now, did you meet with Mrs. Dawson herself at all that afternoon?

A. I met with Mrs. Dawson that afternoon of the 28th of July.

Q. How did that come about, did you call her or did she contact you?

A. I am not certain of that, just how the contact was made, but she and I met in my office.

Q. And the purpose of meeting with her at that time as far as you were concerned was to do what?

A. To determine her concerns about her daughter's death and to give her some approach to what I might do in the way of an investigation to

HH.6

satisfy her needs.

Q. Did she come alone, or was she accompanied by anyone?

A. She was accompanied by another lady who I believe was a relative.

Q. Now during the meeting that you had with Mrs. Dawson that afternoon, did you take any notes?

A. No, I did not.

Q. She has already indicated to us yesterday that she did not keep notes either. As far as you can recollect did the person who accompanied her keep any notes?

A. Not that I recall.

Q. So we are left with the situation then of the participants in the meeting relying on their recollection as opposed to notes refreshing their recollection?

A. Yes.

Q. Now what did Mrs. Dawson explain to you at that point in time about the death of her baby?

A. She gave me a background of Amber's life, and she indicated to me that she had been informed that Amber had died early in the

HH.7

morning and this was most unexpected as far as she was concerned, she felt that Amber should not have died. She was looking for a cause of death and she was - she felt it important that an independent investigation be done and that a pathologist - or that the autopsy not be done at the Sick Children's Hospital and that came across as an important issue with her, to me.

Q. Did she express to you any feelings that she herself and whether they were based on fact or not, as to the cause of death of the child?

(2) A. She expressed to me her conern that Amber may have received the wrong medicine.

Q. Now how did she strike you that afternoon, the baby had died relatively shortly before she met with you. How was her demeanor and attitude when you met with her?

A. She and I had a lengthy talk, at least I would think it lasted probably somewhere in the neighbourhood of 45 minutes or so, and during that time I felt that she was a caring, concerned mother. She struck me as being very intelligent and a very concerned mother.

Q. I take it she was obviously

upset at this point?

A. She was - she did not break down, she was very coherent and very straightforward, but she was obviously saddened and it was quite apparent that she was a very caring person about this daughter that she lost.

Q. Were you able to say, or did she indicate to you any desire on her part that the investigation into the death of her baby be carried out with some ultimate benefit to other children in mind?

A. Yes, she did. She felt that she could not do anything for Amber actually at this time, but she felt that Amber should not have died and she expressed to me the wish to help other children, or to see that if her daughter had died as a result of incorrect medication, wrong medication, that that should not happen again.

Q. Now, you indicated that one of the important concerns of Mrs. Dawson that you were made aware of was this autopsy not be done at The Hospital for Sick Children, and I take it you addressed that concern?

A. I did.

Q. What did you tell her about autopsies in general, and specifically about Amber

HH.9

Dawson's situation?

A. I told her that it was quite within my power to order that the autopsy be done somewhere other than at the Sick Children's Hospital. I told her that there were several pathologists that could do and did do autopsies for the Coroner's Office, and that I could request a specific pathologist if that was required. I did point out to her that the most experienced pathologists in regard to paediatric pathology were at the Sick Children's Hospital and that if I were to order an autopsy done by a pathologist at the General Hospital his experience in paediatrics would be limited by the rather infrequent opportunities he would have to do paediatric pathology at a general hospital. So I was hoping that she would accept my advice that the autopsy be done at the Sick Children's by an experienced paediatric pathologist. I pointed out to her that there was a great difference between a pathologist acting in his capacity as a hospital pathologist on the one hand, and his acting as a Coroner's pathologist for the Coroner's Office on the other hand. That indeed if he did an autopsy on a warrant from a Coroner, he was obliged to supply me with a report that he was not in any way reporting to

HH.10

the Hospital, he was acting outside his responsibilities to the Hospital and that I personally felt that no professional pathologist given that separation of responsibilities would in any way jeopardize his professional career by doing anything but a most thorough and professional examination.

BM/hr

Q. Now, did your explanation of the various procedures that you could resort to for the purposes of this autopsy and the reporting procedures that are posed upon a pathologist during autopsy on a coroner's warrant comfort Mrs. Dawson in any respect?

A. Yes, when the explanation was given to her she recognized that by following my advise she would have, as I believed, the best available information to her in the future. This was done that afternoon and I am certain that it was done that afternoon because it was such an important thing to Mrs. Dawson.

Q. All right. Now you are aware that in the course of giving her evidence to the Commission yesterday, Mrs. Dawson indicated that she learned for the first time sometime later in a conversation with you in 1981 that the autopsy had been performed at the Hospital for Sick Children and she was surprised at this. Do I take it from what you have said that your recollection of the conversation that day does not involve the discussion on that point being left in such a way that she was not aware at that point where the autopsy was being performed?

A. There was no doubt in my mind that she clearly understood where the autopsy was to be done and why it was to be done there. I had an understanding that Dr. Bennett knew of the concern that Mrs. Dawson had about the autopsy originally, her original concern about the autopsy being done at Sick Children's and I would not go ahead and order an autopsy done there without clearing it with Mrs. Dawson, realizing that I would have to answer to the Deputy Chief Coroner had Mrs. Dawson made a point of where the autopsy was done at some future time.

Q. Now you have indicated that this was a matter of considerable importance to her at the outset of your conversation and that you explained to her that there were various alternatives open to you that would not necessitate the autopsy being done at the Hospital for Sick Children. If the matter had been so important to Mrs. Dawson at that time that she was not comforted by your explanation of the various procedures, is there any reason why you would either have to or choose to order the autopsy to be done at the Hospital for Sick Children notwithstanding your concern?

A. No. Had she not been convinced

it was quite within my power, and it would not have involved any major effort on my part to pick up the phone and ask Dr. Bennett or the Chief Coroner to arrange for the autopsy to be done at the Coroner's Building by a pathologist not associated with the Hospital for Sick Children.

Q. So, had that been a matter of serious concern following your discussion you could have had the body removed to the Coroner's Building and a pathologist come in from one of the other Hospitals to perform the autopsy there at the Coroner's Building?

A. Yes.

Q. Now you had a number of conversations with Mrs. Dawson after this first conversation?

A. Yes.

Q. In any of the subsequent conversations did the issue of where the autopsy had been performed ever come up in any way?

A. No.

THE COMMISSIONER: Before we get too worked up about this, my note doesn't disclose that that was her complaint. It was her initial idea but is there evidence in the transcript from yesterday.

MR. HUNT: Well, there was in the transcript, I was looking for the reference but I didn't mark it. That was one of matters.

MS. CECCHETTO: It comes up in Mr. Lamek's re-examination.

THE COMMISSIONER: Oh, it's at the end, is it?

MS. CECCHETTO: And she said the first time she learned of it was when she --

MR. YOUNG: There is also reference sir at page 2478 that might be of some assistance to you.

THE COMMISSIONER: Well, I am relying upon my own notes at the moment, which are not as good as the transcript.

MR. HUNT: 2505 then in Mr. Lamek's examination, particularly lines 14 through to 19.

THE COMMISSIONER: What pages is it again.

MR. HUNT: 2505.

THE COMMISSIONER: 2505.

MR. HUNT: Lines 14 through to 19 in particular.

THE COMMISSIONER: Well, but she didn't- you are suggesting that she has said that she thought

it was not to be performed at the Hospital for Sick Children, you are not suggesting that?

MR. HUNT: No, I am suggesting what she has testified to you, this particular reference certainly is that she didn't discover according to here recollection, that it had been performed there until sometime later.

THE COMMISSIONER: She doesn't quite say that.

MR. HUNT: Well, she says if she had been told in Dr. Bunt's office that day that he was going to have somebody from the Hospital for Sick Children do it she probably would have said no at the time.

THE COMMISSIONER: I'm sorry, where is that?

MR. HUNT: 2505 between lines 14 and 19.

THE COMMISSIONER: Oh, I see, all right. yes. I'm sorry, you are quite right, yes, all right carry on.

MR. HUNT: Q: So, her recollection was that she learned this and it came as some surprise to her later?

THE COMMISSIONER: Yes.

MR. HUNT: Q: Now, Dr. Bunt, you have indicated in any of your subsequent conversations with her, the fact that it had been done at the Hospital never was raised as an issue?

A. That's correct.

Q. And given the concern she expressed at the outset of your discussion on July 28th had she not been comforted by you with respect to the appropriateness of the autopsy being performed there, would you have expected, given the state of her discomfort over that, that she would have raised this as an issue at some time later had she been surprised at where it had been conducted?

A. I certainly think she would have, yes.

Q. All right.

A. I would have expected her to.

Q. Now, Mrs. Dawson has a recollection clearly fixed in her mind now that she has testified here to that she felt as of July 28th that there had been some sort of a medication error in the context of the digoxin overdose. She also has a recollection clearly fixed in her mind that she said to you at this meeting on July 28th, her words were,

"I do not want to find out that she (that's Amber) died of an overdose of digoxin"

Now, she says that she distinctly remembers saying that and she goes so far as to say that she recalls saying those exact words.

Now first of all, I suggest to you that a statement, "I do not want to find out that she died of an overdose of digoxin", is an extremely emphatic way of raising a concern about medication error or particularly digoxin overdose?

A. I would agree.

Q. All right. And I ask you sir was the concern that she now recollects that she had that the baby died as a result of a medication error in the context of digoxin overdose a matter that was raised at that time with you, on July 28th, as far as you can recall?

A. I do not believe so.

Q. Do you recall digoxin, the subject matter of digoxin being raised in any context by Mrs. Dawson in that meeting of July 28th?

A. No, I do not.

Q. When at any time in your conversations with her do you recall a discussion about digoxin?

A. Not until the following year, I believe the date was April 1st, 1981.

Q. And you had a discussion with her at that time?

A. I did, by telephone.

Q. Did she call you or did you call her?

A. I believe the first call was from her. I believe she was in Sudbury and I was not in the office and I believe I returned her call. Excuse me, her call to me from Sudbury was on the 31st of March. My secretary took the message and I returned a call to her on the 1st of April.

Q. All right. Now, that was after the arrest of Susan Nelles?

A. Yes.

Q. And that was after considerable publicity had been given to the fact of that arrest including pictures of Ms. Nelles being in newspapers that were spread throughout the country?

A. Yes.

Q. All right. Did her call to you at that point have something to do with her having become aware of Ms. Nelles arrest and having seen her

pictures in some of the papers?

A. Yes, it did.

Q. We will deal with that momentarily. But the issue raised with you in the meeting with Mrs. Dawson on July 28th as far as you are concerned was, one, her feelings that the baby had received the wrong medication?

A. Yes.

Q. And it was not raised with you in the context at that time of a digoxin overdose?

A. I do not recall any drug being specifically mentioned.

Q. All right. Now you have already observed, sir, you have no notes, she has no notes and lest there be any concern on the part of the Commissioner or others that your recollection is a particularly self serving one I want to look at your normal procedures for a moment to see how in some of the other 8,000 plus deaths that you have investigated as a coroner you have reacted to concerns raised by relatives.

Now, is a relatives concern about the cause of death something which you as a coroner setting out on your investigation would discount to any degree or give less persuasive weight to because

he doesn't consider major anymore this afternoon.

MR. SCOTT: This kind of pejorative comment is unnecessary. I made an objection and I will make any other objections that I think are relevant in the evidence as they arise and I'm not going to be put off by the Attorney Generals Counsel

THE COMMISSIONER: Normally under these circumstances if it weren't for the fact that Dr. Bunt is here and we have all sorts of other people watching this I would suggest we rise and go home but I think -- I'm just going to ask how much longer do you think you will be?

MR. HUNT: I think I can finish it up in a half an hour without having to handle two areas of concern at once, sir.

THE COMMISSIONER: All right. Do I understand that - well, I don't quite know what to do and I would like to have some help from people. Is anyone going to object if we rise without Dr. Bunt being cross-examined?

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that concern is being raised by a layman as opposed to a medical doctor or another medical care person?

A. Certainly not.

MR. HUNT: I'm sorry, Mr. Scott wants to speak to me.

MR. SCOTT: You can ask him if he is still beating his wife.

MR. HUNT: Well, if Mr. Scott has an objection sir, I think he should put it on the record.

MR. SCOTT: Well, I will make the objection. My friend says - it is not a major matter - my friend says that he doesn't want the self-serving evidence of Dr. Bunt to stand alone so he elicits some more by a leading question. I don't think that is helpful to the Commissioner and to other counsel. I don't think it can be prevented by anything I can do but I don't think it is persuasive.

THE COMMISSIONER: Well, whether it is persuasive or not is for argument.

MR. SCOTT: Yes.

THE COMMISSIONER: And if the question is proper and I consider it is proper, so, you proceed, Mr. Hunt.

MR. HUNT: Thank you, sir. I hope Mr. Scott won't make major matters out of anything that

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MR. SHANAHAN: Mr. Commissioner, I --

THE COMMISSIONER: You are scheduled for the Provincial Court for the rest of the year? You are going to object, I take it?

MR. SHANAHAN: Mr. Commissioner, I have been scheduled to be here about 10:30 in the morning and, when you said that you were going to finish today, that suited me fine. I do see what difficulty we are running into here and I am just concerned - it is not just me being here to examine.

THE COMMISSIONER: What we could do, if Dr. Bunt is available, we could put the cross-examination over to Thursday, and are you available on Thursday?

MR. SHANAHAN: I will make myself available. I don't know if that is convenient to Mr. Hunt.

MR. HUNT: I will certainly be here Thursday. I haven't consulted with Dr. Bunt about that.

THE COMMISSIONER: Are you available on Thursday?

THE WITNESS: I can be here Thursday, Mr. Commissioner.

THE COMMISSIONER: I think then, Mr.

JJ2

Scott, you are not going to have many --

MR. SCOTT: Mr. Hunt is lucky, I won't be here.

THE COMMISSIONER: Well, all right. I think what we will do is, we will leave Mr. Hunt to his devices now for another half hour and we will complete that and then we will proceed further. I have to tell you that I am going to be late on Thursday, but it will be 10:30 on Thursday morning with the cross-examination, and I take it, Mr. Shanahan, you and anyone else who is vitally concerned on this cross-examination will be here on Thursday. Even if we are not finished with all the argument from tomorrow, we will proceed at 10:30 on Thursday with the cross-examination.

Yes. All right.

Now, Mr. Hunt.

MR. HUNT: Thank you.

Q. In fact, sir, is there any particular family member that, as a doctor, you learn to rely on or trust in the judgment when dealing with children more than any other family member?

A. I think you certainly have to pay attention to what a mother tells you about her child.

JJ3

Q. Why is that?

A. Mother or father, but particularly the mother.

Q. Why is that?

A. She knows her child better than anyone else.

Q. Does it happen from time to time that, in your experience, relatives have raised special concerns concerning the high levels of drugs and other substances that may be found in the deceased?

A. Yes.

Q. Is there a particular type of case why this usually occurs?

A. It is usually a case of suicide. I think those are more common than the other cases that might arise.

Q. Now, when, in your experience, a concern such as that is raised by a relative, what do you do to ensure that that concern is fully explored on any post mortem examination?

A. The Warrant to perform a post mortem examination signed by a Coroner has a section at the top where special examinations can be requested by a Coroner. All it requires is that a Coroner make that request in writing to the pathologist.

JJ4

Q. That is something that you have done? By that, I mean you have noted on Warrants for post mortem examinations in the past that special tests would be performed by the pathologist as a result of concerns raised by relatives?

A. Many, many times.

Q. Now,would it be, in your experience, unusual to have a relative raise a concern about a wrong drug being received by the deceased when that deceased was a patient in a hospital?

A. Can I have the first part again, please?

Q. Would it, in your experience, be unusual to have relatives raising a concern about wrong medication when the deceased was a patient in a hospital?

A. Such cases I don't believe are common, no.

Q. The fact that that type of concern was raised by Mrs. Dawson, the wrong medication may have been given to her child, then made this somewhat of an unusual situation?

A. Yes.

Q. And, sir, the fact that it was unusual in that sense, would that be, in your view, an

JJ5

appropriate reason to discount it or ignore it?

A. No, not at all.

Q. When someone raises a matter such as that, that you found to be unusual, suggesting an unusual concern, how does that affect your reaction to it, as you set out on the investigation of the death?

A. It is one dimension to the investigation that I must keep in mind when I proceed.

Q. Now, at the time of this death, that is, July 28, 1980, were you aware of any established procedure for testing of post mortem blood or serum in infants for digoxin?

A. No, I was not.

Q. Would the fact that you were not aware of any established procedure at that point for testing post mortem blood or serum in infants for digoxin have led you to discount the concern raised by a person if, in fact, it was raised?

A. No, I would not.

Q. Were you aware at that point in time of post mortem blood or serum digoxin tests being done on adults?

A. Yes.

Q. So, at that point, did you

JJ6

consider it an impossible procedure to have a post mortem level done on an infant?

A. No.

Q. Now, your recollection is that Mrs. Dawson raised a concern of a medication error with you and you did not order any drug screen of any type to be done?

A. I did not.

Q. And that is certainly something I would imagine you have done many times in the past?

A. Not ordered a drug screen?

Q. No, have ordered a drug screen -- not perhaps a general drug screen, but for particular drugs?

A. Yes, I have ordered drug screens and ordered particular drugs to be looked for, yes.

Q. Does the fact that you did not order a drug screen to be done with respect to this baby tell you anything about the information or lack thereof that you were given at the outset on the 28th of July?

A. I did not have a specific drug suggested to me and, in that sense, I did not order, as a consequence, that testing be done.

JJ7

Q. So, you have to have a specific drug or a specific class of drugs in mind before one approaches the problem of selecting an appropriate drug screen test?

A. Yes. To have a goal facilitates the ordering of a drug -- in other words, if one is suspicious of a particular drug or group of drugs, it is easy to write that kind of order, but to write a blanket order for drug screen, really accomplished little. I suppose if you get a positive, yes, but a negative just leaves you up in the air again.

Q. So, if you are confronted with a concern re medication error, and that is all, without any further narrowing of the potential medication that may have been given in error, then you are really handcuffed considerably in terms of selecting an appropriate response by way of drug screen?

A. My feeling was that Mrs. Dawson's concern was that Amber got the wrong drug. I had to have some suspicion of a drug or group of drugs in order to proceed to order testing done.

THE COMMISSIONER: What do you mean by the term "drug screen"? What does that mean? Do you have to have a specific drug for that? Are there not some things that there will be some pathology

JJ8

automatically?

THE WITNESS: In some deaths, for example, a traffic fatality, we may want to know if common drugs are a contributing factor, either to the immediate cause of death or to the circumstances leading up to the death.

THE COMMISSIONER: That would be automatic but, supposing someone dies unexpectedly at night and you are asked to investigate, and you often are, I would think --

THE WITNESS: Yes.

THE COMMISSIONER: -- what do you do? People can die of any drug. Presumably, they can also die of digoxin. People can take digoxin themselves, suicide or somebody can give them digoxin.

THE WITNESS: Yes.

THE COMMISSIONER: And if someone does die under these unusual circumstances, how would you investigate that?

THE WITNESS: You would hope to have some indication in other areas of the investigation. You go to a home and you look for sources of drugs; you look for a medication, empty vials, and check garbage pails. That is part of the process of trying

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to narrow down the possibility of what drug has been taken.

THE COMMISSIONER: In the case such as Mrs. Dawson's complaint, how would you comply at all? If she says she has a suspicion that she was given the wrong medicine, how do you test for that sort of complaint, or can you not?

THE WITNESS: That is my problem. I had nowhere to start. The Compendium of Drugs is probably two or three inches thick.

MR. HUNT: We are going to get into the examination of the chart to see if there was any indication in the chart of any medication errors or drugs being given that weren't perhaps recorded as that. That was the next --

THE COMMISSIONER: What I am concerned about, doctor, is this: Someone comes to you and says, "I suspect my child has a medication error", and that, in itself, is not enough. I mean somebody who has died in a hospital, it is not enough. It won't help you out at all. You can look at the chart --

THE WITNESS: Yes, you would.

THE COMMISSIONER: -- and see what you can come to. What do you say to the mother or to the relative who says this? Do you tell them that you

JJ10

can't without some indication of what the medication error was?

THE WITNESS: It would depend at what point of the investigation you are talking to the relative.

THE COMMISSIONER: I don't want to ask a hypothetical question. I really mean, did you say, or what do you remember that you said to Mrs. Dawson?

THE WITNESS: I do not recall specifically what I said to Mrs. Dawson, but I know what my intention was, having heard what she said.

THE COMMISSIONER: I am misbehaving again, Mr. Hunt, but I would like to follow that up, and would you do it for me?

MR. HUNT: Certainly.

THE COMMISSIONER: Yes. All right.

MR. HUNT: Q. Mrs. Dawson came to you in the afternoon of the day that her baby died and expressed her concern, which you recall as being one of death through medication error. At that point, had you examined the chart of Baby Dawson at all?

A. No, I had not.

Q. And given the simple statement of the concern about medication error, would it be

JJ11

appropriate for you at that point in time to make any comment at all about the possibility of that having occurred or about what possible medications might have brought about the death of the baby?

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A. I would feel uncomfortable speculating about what might have caused her daughter's death.

Q. What would be the very first step then that you would want to take in order to both commence your investigation and as well direct your mind to the concern that had been raised about medication error?

A. I would want to review the chart thoroughly.

Q. Now, what would be the purpose in reviewing the chart, what would you be looking for, or wondering if you were going to find it?

A. I might look for inappropriate order by a physician that was carried out by someone. Or I might find a note that an error was carried out in the administration of a drug.

Q. Made and reported as such?

A. Yes.

Q. On an incident report?

A. Yes.

Q. Or there might be a note in the progress notes made by someone who gave a drug administration that indicated what drug had been given when there was no order for that drug?

A. Yes.

Q. Well later that day, after talking to Mrs. Dawson, the day the baby died, did you go to the Hospital and search?

A. I did.

Q. And where did you go at the Hospital?

A. I went to the Medical Records Department.

Q. What was your purpose in doing that?

A. To review the chart.

Q. When you examined the chart that day were you directing your mind to the question of medication error?

A. Yes.

Q. And specifically what were you looking for?

A. I was looking to see if there was any indication on the chart at all that this child had received an inappropriate drug.

Q. Did you find that?

A. No.

Q. What medications, if you can recall now, did you find that the baby had been on?

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A. The infant had been on digitalis, aldactazide and Fer-in-sol.

Q. Now I am sorry, the last one is?

A. A vitamin iron preparation.

Q. Now did you find in the chart any indication that any of those two drugs, or the iron vitamin solution had been given in any inordinate amount or in error?

A. No, I did not.

Q. What else did you do at the Hospital that afternoon in addition to reviewing the chart?

A. I wrote out a Warrant for an autopsy, a Warrant to bury Amber Dawson following the completion of the autopsy, and I believe I contacted Dr. Cutz in regard to his carrying out the autopsy.

Q. Is it the normal procedure to discuss a case with the pathologist at that point in the investigation?

A. It is, particularly at Sick Children's, because it is necessary what pathologist may be on call. So I usually, if the body is going to remain at Sick Children's, so I usually call the Coroner's Clerk to determine what pathologist is

KK.4

responsible for autopsies for that day and then inform him that there is an autopsy to be done and give him whatever background I feel is appropriate.

Q. If some of the background that you had at that point was of special concern that had been raised by a relative or anyone about a particular drug, would that be something that you would address?

A. Yes.

Q. And would you address that verbally or in writing, or how?

A. Both.

Q. How would that be done?

A. I would express my - request verbally likely at the time if it was an important issue, and I would write it on the Warrant to bury as a special examination at the top, more to the autopsy not the Warrant.

Q. And if, sir, digoxin had been raised with you as a special concern at that point in time is there any reason that you can think of now why you would not have expressed such a concern then, both in writing and orally, or either in writing or orally?

A. No reason whatsoever why I should not write the order.

KK.5

Q. Now did you later receive some verbal report from the pathologist about the autopsy and the findings?

A. Yes, I did.

Q. How long after July 28th would that have been?

A. I would think this was a matter of a few days.

Q. Do you recall whether you went to the Hospital to meet with the pathologist to receive that?

A. No, I believe that - I know I did not go to the Hospital to meet with the pathologist, it was a telephone communication.

Q. What at that point in time were you made aware of?

A. I was made aware of three findings. At that point in time the attention of the pathologist and my attention was focussed on what was described as an abscess on the stomach, in the stomach area, the diaphragm area. In addition to that the presence of a hemiparesis of the diaphragm, and also congenital heart disease were described by the pathologist.

Q. At that point in time was any

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opinion given to you by the pathologist with respect to cause of death?

A. This was early on in the pathologist's investigative process, and his early statements to me suggested that the abscess might be a factor that would have been of major import in her death.

Q. Was there more work to be done with respect to that?

A. Yes, there was.

Q. Such as what?

A. One of the important things that needed to be done was a culture of the abscess and a blood culture.

Q. And was this something that you expected to take some time?

A. Yes. There were also microscopic studies to be done of several areas that the pathologist was investigating.

Q. This information you believe you had some time in early August?

A. Yes.

(2) Q. Did you do anything with it?

A. I believe I informed Mrs. Dawson by telephone that the preliminary investigation

suggested that an abscess may have been a factor in Amber's death and an important factor in Amber's death.

Q. Did you convey to her at that time any notion that the matter insofar as the autopsy and the study of tissue was concerned was completed?

A. No, it was not completed and I informed her that it was not completed, that the investigation by the pathologist continued, that there were microscopic examinations and reports on blood to be returned.

Q. And how was the matter left with her at that point?

A. It was left that it might be several weeks, possibly up to six or eight weeks that would pass before I might have a complete report for her.

Q. Now you received at some point in time a written report then from Dr. Cutz?

A. I did.

Q. Do you recall approximately when that was?

A. This would be along about mid-October.

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Q. Between your conversation with Mrs. Dawson in early August and receiving this report in mid-October, did you have any further conversations with Mrs. Dawson that you can recall?

A. I don't recall any further conversations.

Q. When you received the completed report from Dr. Cutz in mid-October, what did you do?

A. I am not sure whether I had asked Mrs. Dawson to contact me about that time, or whether indeed I contacted her, but I did indicate to her by telephone that the report was available and that I would be pleased to discuss it with her, preferably at a meeting with her when she was in Toronto.

Q. Was an arrangement made at that time with her to come here to meet with you?

A. It was, yes.

Q. And that meeting was to take place when?

A. The meeting was to take place, I believe the meeting was to take place either the 7th of November of the 21st of November.

Q. Now we will get to the meeting in due course, but at the point in time you received

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the written report from the pathologist --

A. Excuse me.

Q. I am sorry?

A. I would like to correct that. May I think about the dates a minute?

THE COMMISSIONER: Certainly.

THE WITNESS: May I refer to my notes.

THE COMMISSIONER: Certainly.

THE WITNESS: In a note left for me by my secretary suggests that Mrs. Dawson was to attend at my office on November the 14th.

MR. HUNT: Q. Was that about mid-November the meeting was set?

A. Mid-November, on mid-November, November the 14th.

Q. Now what was your understanding then as to the pathologist's opinion with respect to the cause of death, this is in October when you received the report?

A. The report indicates his cause of death description and the cause of death.

Q. Which was what?

A. Immediate anatomical cause of death not determined (contributing factors congenital heart disease, right hemi diaphragm paralysis).

KK.10

Q. And did you take that information and put that together with other information that you had obtained during the course of your investigation?

A. I did.

Q. Did you come to any different conclusions with respect to the cause of death?

A. I did not.

THE COMMISSIONER: I wonder, it is now 5 o'clock, there is really no urgency to complete Dr. Bunt today unless you would like to do so. How much longer do you have?

MR. HUNT: I am almost done. We really have this meeting and then one further discussion.

THE COMMISSIONER: All right, let's do that then.

MR. HUNT: Q. So, you are left then in the position in mid-October of an undetermined cause of death and the suggestion as to underlying causes, were you completely comfortable with that?

A. It was acceptable to me.

Q. What do you mean by acceptable?

A. There was nothing that I had in the way of any evidence which would point to

KK.11

Amber dying in any way other than through natural causes?

Q. And has it happened from time to time in your experiences that you have investigated cases where the specific cause of death was not determined, but that the evidence suggested natural causes and the situation was acceptable to you notwithstanding that no specific cause was found?

A. Yes, it has.

Q. Has that happened often?

A. I wouldn't say often, but certainly not infrequently.

THE COMMISSIONER: Excuse me, what is the connection, this is what is causing me trouble, with this abscess and the perforation of the stomach? Can you help me on that? I think I once understood, an abscess is not in itself a perforation.

THE WITNESS: Mr. Commissioner, you probably have this better answered by the pathologist who actually viewed it but I can give you my understanding.

THE COMMISSIONER: If you look at the --

THE WITNESS: I can give you my understanding of it from his report if that would assist you?

THE COMMISSIONER: Yes, all right.

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A. Now, this is in all fairness to Dr. Cutz, this is his report when he has completed all his investigation, which includes the microscopic examination. So that this may be somewhat different than the first available information from him to me.

The lateral aspect of the cardia shows a 1 x 1.5 cm. recent perforation --

THE COMMISSIONER: Where do you find that?

THE WITNESS: I am on page 3 of his report, the very top under GastroIntestinal System.

MR. HUNT: I'm not sure that the pages are numbered the same.

THE COMMISSIONER: This is page 61 of the chart.

MR. HUNT: Q. Do you have the chart there, Doctor?

MR. LAMEK: It is page 61 of the chart.

A. Yes. I am reading from my report because it is larger printing and it is a little more legible. But I believe, my understanding is that both reports are the same.

THE COMMISSIONER: Yes.

A. I believe that the perforation of the stomach had caused an area of inflammation adjacent to the area of perforation and that this had

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initially been interpreted as an abscess.

If I could clarify it a little more for you. The stomach wall has structures adjacent to it which are in close proximity to it and, when the wall is perforated, it can set up an inflammation in those structures immediately adjacent to the wall. I believe that that area of inflammation was initially interpreted visually by Dr. Cutz as an abscess. That is not described as an abscess in his final report; it is described as a perforation with fibrous adhesions in the area between the tip of the spleen and the mid-portion of the pancreas, those two organs being adjacent to the wall of the stomach at the point of perforation.

THE COMMISSIONER: Yes. All right.

MR. HUNT: Q. All right. Now, sir, at this point, given the information you had, what steps were left for you to take in order to attempt to solve this mystery any further?

A. I had a responsibility to discuss the findings I felt in detail with Mrs. Dawson and I felt that at that meeting I would also have an opportunity to hear her concerns, if there were any, and to continue to investigate in a way that she and I might feel was appropriate if she had concerns that

LL3

needed answering.

Q. Were there any steps left at this point that you could take in terms of examination of the body or tissues that would have been reasonable?

A. Only as I explained previously, I would need a goal, I would need a reason and a goal or, hopefully, a goal to proceed with more investigation in the form of tests.

Q. All right. Now, I take it you met with Mrs. Dawson on or about November 14th to discuss the situation or at some time in November?

A. Yes. I believe it was either the 7th or the 21st.

Q. She came to Toronto for that purpose?

THE COMMISSIONER: I'm sorry, I thought we changed that to the 14th?

THE WITNESS: No. I understood that the date was to be the 14th and, indeed, I think I made an appointment with Mrs. Dawson for the 14th but through some communication error she either arrived on the 7th or the 21st.

THE COMMISSIONER: I see.

MR. HUNT: Q. All right. And you met with her for some time on that date?

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A. Yes.

Q. Approximately how long?

A. I would think it was probably in the neighbourhood of two hours.

Q. Did you explain to her the findings of the post mortem examination and the conclusions of the pathologist that you had accepted?

A. Yes. We went through the autopsy report, which I had and which I shared with her.

Q. Did you explain to her how you felt about that particular state of affairs?

A. Yes.

Q. What was her reaction?

A. I think Mrs. Dawson was disappointed.

Q. In what sense?

A. I believe she was disappointed that we hadn't discovered an error somewhere, something wrong.

Q. Well, certain things wrong had been discovered but was this in a different context?

A. Not in a medical sense, I mean in a therapy sense.

Q. All right. I'm sorry, what do

you mean by that?

A. That something I think she was disappointed that we didn't find something wrong with Amber that wasn't explained on the basis of disease.

Q. I see.

THE COMMISSIONER: She didn't find that someone had done something wrong, is that what you mean, or is that what she expected?

THE WITNESS: Actually, all I really gleaned from Mrs. Dawson at the meeting was a sense of disappointment.

THE COMMISSIONER: Well, if she had spoken earlier of medication error, then surely that was what she was speaking of, is that not correct?

THE WITNESS: At this meeting I don't recall medication error being an issue.

THE COMMISSIONER: Yes.

MR. HUNT: Q. That was at the first meeting?

A. No, at the second meeting, at the meeting where I reviewed the autopsy report.

Q. The only time that was an issue up to this point was at the first meeting?

A. Yes.

Q. After your meeting with her in

LL6

mid-November, you have indicated you spoke to her in April of 1981. Did you have any conversations with her in the interim?

A. Not that I recall.

Q. All right. And then how did it come about that you spoke to her? I think you said it was the 1st of April 1981?

A. Yes, I believe she called my office on the 31st of March and I was not in my office and I received a message that she had called and I returned her call on the 1st of April.

Q. And what was the purpose of her calling you?

A. To the best of my recollection the conversation was initiated by her saying, 'I've seen the Toronto Globe and Mail' --

Q. Let me just interrupt you here. She told you that she had seen accounts of an arrest having been made in connection with deaths at the Hospital?

A. Yes. She told me that she had seen news reports of what had gone on in Toronto at The Hospital for Sick Children.

Q. And then did she draw some inference from that not with respect to individuals but

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insofar as what had happened to her baby?

A. Yes.

Q. She felt that somehow the fact that there had been arrests made for murders at the Hospital was some assistance to her in settling in her own mind what had happened to Amber Dawson?

A. She indicated to me that she understood what had happened.

Q. Was there any discussion that you can recall about digoxin at that time?

A. None whatsoever. Oh, excuse me, yes, there was discussion about digoxin at that time.

Q. How did that come up?

A. I believe the matter of digoxin was reported in the media and she and I discussed that as a possibility in Amber's death.

Q. Do you recall any discussion with her about testing for digoxin in connection with Amber Dawson?

A. I believe she asked me if I had tested for digoxin and my reply was, no.

Q. Was there any shock or surprise expressed by her at that point?

A. She did not express to me surprise.

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Q. Was there any discussion with her at that point about the possibility of Baby Dawson being exhumed?

A. Yes. She volunteered that if it would serve.

Q. And did you discuss with her the involvement of members of the Metro Police at that point?

A. Yes. I indicated to her that I would be prepared to convey that offer to the police.

Q. So, in summary, sir, the first recollection you have of discussion about digoxin or testing for digoxin with Mrs. Dawson occurred during that telephone conversation that you had with her on the 1st of April 1981?

A. Yes.

MR. HUNT: Those are all the questions I have.

THE COMMISSIONER: Yes, all right. Thank you. Well, I think we will rise then until ten o'clock tomorrow morning and Dr. Bunt 10:30 on Thursday.

THE WITNESS: Thank you, Mr. Commissioner.

--- whereupon the hearing was adjourned at 5:15 p.m. until Wednesday, the 9th day of May 1984, at 10:00 a.m.